

(2023) 05 DEL CK 0130
In the Delhi High Court
Case No : Bail Application No. 2025 Of 2022

Ahshan Ali

APPELLANT

Vs

State (Nct Of Delhi) & Anr.

RESPONDENT

Date of Decision : 18-05-2023

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439
Indian Penal Code, 1860 — Section 34, 313, 323, 354A, 376, 376(2)(f), 376(2)(n),
377, 506

Citation : (2023) 05 DEL CK 0130

Hon'ble Judges : Vikas Mahajan, J

Bench : Single Bench

Advocate : A. K. Mehta, Anubhav Bhardwaj, Meenakshi Dahiya, Yogesh Gaur,
Seema Saini, Vinit Hora

Final Decision : Disposed Of

Judgement

Vikas Mahajan, J

1. The present petition has been filed by the petitioner under Section 439 of the Code of Criminal Procedure, 1973 seeking regular bail in FIR No.0354/2020 under Sections 323/376 IPC registered at PS Jyoti Nagar, Delhi.

2. The brief facts of the case as per the prosecution as borne out from the FIR are that the prosecutrix was married to the son of the petitioner, namely, Ashim Raja on 23.03.2019 as per Muslim rites. There is no child born out from the said wedlock. Immediately after the marriage, the in-laws of the prosecutrix started harassing her. The husband of the prosecutrix would also beat her and made unnatural relations with her on many occasions. The prosecutrix also came to know that her husband is having an affair with another girl and she tried to reason with him but the better sense did not prevail over him. This fact was also brought to the notice of the petitioner (father-in-law) by the prosecutrix and the petitioner assured the prosecutrix that he would try to reason with his son. The mother-in-law of the prosecutrix had already expired and on various occasions

the prosecutrix would be alone at home with the petitioner. It is alleged in the FIR that on 24.06.2020 when the petitioner and the prosecutrix were alone at home, the petitioner caught hold of the prosecutrix and forcibly made physical relations with her. It is further alleged that even on subsequent occasions, the petitioner made relations with the prosecutrix. Later on, when the prosecutrix shared the alleged incident with her parents, they came to the matrimonial home of the prosecutrix. Thereafter, a complaint was made by the prosecutrix on 31.07.2020, on the basis of which abovementioned FIR was registered under Sections 323/376 IPC.

3. On the basis of the aforesaid FIR, the petitioner was arrested on 01.08.2020.

4. Earlier, the petitioner had filed a bail application being Bail Appln. 2116/2021 under Section 439 Cr.P.C. in the same FIR, before this Court. At that stage, since charges had not been framed and the prosecutrix had not been examined, the said application was dismissed vide order dated 21.10.2021. The court observed that as the petitioner is the father-in-law of the prosecutrix, the possibility of the petitioner threatening the prosecutrix could not be ruled out. However, considering the fact that the petitioner was in custody since 01.08.2020, the Trial Court was directed to expeditiously hear the arguments on charge as well as examine the prosecutrix, preferably within six months. The operative part of the said order reads as under:-

"11. Looking at the fact that the petitioner is the father-in-law of the prosecutrix, the possibility of threatening the prosecutrix cannot be ruled out at this juncture.

12. Accordingly, Accordingly, the bai application is dismissed along with the pending application(s), if any. However, looking at the fact that the petitioner is in custody since 01.08.2020, the trial court is directed to hear the arguments on charge and examine the prosecutrix as expeditiously as possible, preferably within six months."

5. In deference to the directions of this Court, the learned Trial Court vide order dated 11.04.2022, framed charge for offences punishable under Sections 313/34 IPC against all the accused persons, namely, Ashim Raja (husband), Sikander (brother-in-law) and Ahshan Ali (father-in-law/petitioner). Further, charge for offences punishable under Section 376(2)(f)/376(2)(n)/506 IPC was framed against accused Ahshan Ali (petitioner herein), charge for offences punishable under Section 354A IPC was framed against the accused Sikander and charge for offences punishable under Sections 377/323 IPC framed against accused Ashim Raja (husband).

6. Learned counsel for the petitioner at the outset submits that the present criminal case is an offshoot of matrimonial dispute. He submits that the alleged incident of rape is dated 24.06.2020, but was reported to the police only on 31.07.2020 based on which the FIR was registered on 01.08.2020. He further submits that the prosecutrix is a graduate and in case such an incident had happened, there was no occasion for the prosecutrix to stay in the matrimonial

home till the registration of FIR. He further submits that the petitioner is aged about 64 years and is in custody since 01.08.2020. He contends that petitioner is also suffering from various medical conditions. He further submits that the husband as well as the brother-in-law of the prosecutrix have already been admitted to bail.

7. Learned counsel for the petitioner also invited attention of the Court to the statement of prosecutrix (PW-1); statement of the mother of the prosecutrix (PW-2) and the statement of the father of the prosecutrix (PW-3) to contend that the evidence of the prosecutrix as well as both the parents of the prosecutrix has been recorded, therefore, there is no question of petitioner extending any threats to the prosecutrix or to her parents.

8. He further submits that a total of 14 witnesses are to be examined by the prosecution, out of which only 4 witnesses have been examined and the trial is likely to take some time.

9. Learned counsel inviting attention of the Court to the photographs filed on record, urges that though the case of the prosecution is that the prosecutrix was raped on 24.06.2020, on the first floor of the matrimonial house but the photographs reveal that from 23.06.2020 to 25.06.2023, the petitioner's family was performing ceremony of Quran Khawani, since 25.06.2020, was the second death anniversary of the petitioner's wife, and the relatives of the petitioner were present on the first floor on the day, when the incident is alleged to have taken place.

10. Referring to the Rent Agreement dated 15.04.2020 (at page 176 of the LCR), learned counsel for the petitioner contends that the prosecutrix and her husband were residing at a different place and at the relevant time, they were not residing in the matrimonial home. Therefore, the allegation of rape against the petitioner is false and concocted.

11. On the other hand, it is submitted by the learned counsel for the prosecutrix that the photographs relied upon by the petitioner have not been proved as per law and the same have not been exhibited. As regards the Rent Agreement, he submits that the same is a manipulated document. He further submits that the present application is the 8th bail application filed by the petitioner and all previous applications have already been dismissed. He further states that the offence committed by the petitioner is heinous in nature and the petitioner had betrayed the fiduciary and sacred relationship between a father-in-law and a daughter-in-law. He, therefore, urges that no ground is made out for grant of bail to the petitioner and the present application be dismissed.

12. Learned APP for the State also reiterated the submissions made by the learned counsel for the prosecutrix.

13. I have heard the learned counsel for the petitioner, learned counsel for the prosecutrix/complainant, as well as, the learned APP for the State.

14. I have also perused the material on record and the status report filed by the State.

15. Keeping in view the aforesaid facts, the FIR prima facie appears to be an offshoot of a matrimonial dispute between the prosecutrix and her husband. The FIR was also lodged after a period of more than a month and after the rejection of previous application, the evidence of the prosecutrix as well as both her parents, stands recorded.

16. The defence raised with regard to the family members of the petitioner being present on the date of incident at petitioner's house as well as the prosecutrix and her husband staying in separate accommodation, is yet to be proved during trial.

17. But at this stage, keeping in view the facts and circumstances of the case, considering the age of the petitioner and the fact that the petitioner is in judicial custody since 01.08.2020 and the present case prima facie appears to be an offshoot of a matrimonial dispute in which not only the petitioner (father-in-law) but also the husband as well as the brother-in-law of the prosecutrix have been implicated; further regard being had to the fact that the statements of the prosecutrix and both her parents have been recorded, without going into the merits of the case, the petitioner is admitted to bail on his furnishing a Personal Bond in the sum of Rs.20,000/- with one surety bond of the like amount, subject to the satisfaction of the learned Trial Court/CMM/Duty Magistrate, further subject to the following conditions:-

a) Petitioner/applicant will not leave the city without prior permission of the Court.

b) Petitioner/applicant shall appear before the Court as and when the matter is taken up for hearing.

c) Petitioner/applicant shall provide all mobile numbers to the IO concerned which shall be kept in working condition at all times and shall not switch off or change the mobile number without prior intimation to the Investigating Officer concerned. The mobile location be kept on at all times.

d) Petitioner/applicant shall not indulge in any criminal activity and shall not communicate with or come in contact with the, prosecutrix or any member of the prosecutrix's family.

18. The petition is disposed of in the above terms.

19. Nothing stated therein above shall be construed to be an expression of opinion on the merits of the case.

20. Copy of the order be forwarded to the concerned Jail Superintendent for necessary compliance.

21. Order be uploaded on the website of this Court.

22. Order dasti under signatures of the Court Master.