

(2023) 05 DEL CK 0059

In the Delhi High Court

Case No : Bail Application No. 3674, 3675 Of 2022

Faheem Ahmed

APPELLANT

Vs

State (Nct Of Delhi) And Anr

RESPONDENT

Date of Decision : 10-05-2023

Acts Referred:

Constitution Of India, 1950 — Article 21
Indian Penal Code, 1860 — Section 34, 323, 354, 354B, 376
Code Of Criminal Procedure, 1973 — Section 164, 438, 482

Citation : (2023) 05 DEL CK 0059

Hon'ble Judges : Rajnish Bhatnagar, J

Bench : Single Bench

Advocate : Parul Agarwal, Amit Ahlawat, Ankit Mehta, Varun Singh, Sanjay Kumar

Final Decision : Disposed Of

Judgement

Rajnish Bhatnagar, J

1. The present petitions have been filed under Section 438 Cr.P.C. read with Section 482 Cr.P.C. by the petitioners for grant of anticipatory bail in case FIR No. 554/2022 under Sections 323/354/354B/376/34 IPC registered at Police Station Laxmi Nagar.

2. I have heard the learned counsel for the petitioners as well as the learned APP for the State duly assisted by the counsel for the respondent no. 2 and perused the status report filed by the state.

3. Learned counsel for the petitioners submitted that the story narrated in the FIR is false and frivolous. He further submitted that there is a family dispute and various civil suits with regard to property are pending. He further submitted that, in order to grab the share of the present petitioners, the respondent no. 2 at the instance of her husband lodged the present FIR against the petitioners. He further submitted that there are inconsistencies in the statements of the

respondent no.2 as initially the FIR was registered under Sections 323/354/354B IPC but the allegations under Section 376 IPC were added only after the further improvements made by the respondent no. 2 in her Statement recorded under Section 164 Cr.P.C. which clearly shows that they are the afterthought. Learned counsel for the petitioners further submitted that custodial interrogation of the petitioners is not required and no recovery is to be affected from them. He further submitted that the petitioners are ready to join the investigation as and when required by the IO and there are no chances of the petitioners' absconding or tempering with the evidences.

4. On the other hand, learned APP for the State and the learned counsel for the respondent no. 2 while vehemently opposing the present bail applications submitted that the allegations against the present petitioners are grave and serious in nature. Learned APP further submitted that the respondent no. 2 had properly reported in her complaint to the police detailing about the allegations made by her in the Statement under Section 164 Cr.P.C. and the complaint was also forwarded to the concerned office of DCP.

5. In the instant case, a bare perusal of the FIR and the status report shows that on 09.09.2022, a PCR call was made by the complainant and therein only allegations of molestation were leveled against the petitioners. Further, on 10.09.2022, another PCR call was made in which it was alleged that the brothers-in-law (petitioners herein) made a phone call to the complainant and threatened her that they are coming along with their friends to rape her. Later, on the same day, at 02:04 P.M. another PCR call was made in which the same allegations as above were leveled. It was only on 26.09.2022, when the written complaint was forwarded to the concerned DCP and ACP, the allegations of rape were leveled against the present petitioners. Furthermore, in the MLC dated 09.09.2022 as well, no signs of rape were found and observations made by the Doctor from Hedgewar Hospital were only for physical assault.

6. On 19.10.2022 another PCR call was made by the complainant wherein again allegations of molestation against the present petitioners were made.

7. A summary of the judgments made by the Hon'ble Supreme Court has led this Court to believe that when considering the current petitions, it is important to examine not only the severity of the accusations made, but also the conditions under which the petitioners may be released on bail. Specifically, the Court must ensure that the Applicant will not attempt to evade the law, and will instead cooperate with the investigation. Additionally, the Applicant must not try to influence witnesses or tamper with evidence during the trial, and must actively participate in the proceedings.

8. The prosecution does not claim that there is a likelihood of the petitioner refusing to participate in further investigation or that he needs to be interrogated while in custody. Moreover, the contention of the learned counsel for the petitioners that no recovery is to be affected from the petitioners has not been

opposed by the prosecution. However, the complainant has opposed the grant of anticipatory bail to the petitioners, citing the serious nature of the allegations, but the Hon'ble Supreme Court in various judgments time and again has held that seriousness of the offence cannot be the only basis for denying anticipatory bail to the applicant. The provisions of Section 438 Cr.P.C. have emerged from the Article 21 of the Constitution of India, which pertains to an individual's liberty. In addition, the fundamental principle of criminal law is that a person is presumed innocent until proven guilty.

9. Therefore, keeping in view the entire facts and circumstances, the bail applications are allowed and in the event of arrest, petitioners be released on bail on their furnishing personal bond in the sum of Rs.25,000/- each with one surety in the like amount each to the satisfaction of the Arresting Officer/SHO concerned.

10. With the above observations, the applications stand disposed of accordingly.

11. Nothing stated hereinabove shall tantamount to the expression of any opinion on the merits of the case.