
(2012) 11 DEL CK 0194

In the Delhi High Court

Case No : Bail Application No. 1317 of 2012

Jagdish Nautiyal

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 29-11-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 82, 83
Penal Code, 1860 (IPC) — Section 376, 420, 495

Citation : (2013) 1 AD 475 : (2013) 1 JCC 311 : (2012) 1 JCC 311

Hon'ble Judges : V.K. Shali, J

Bench : Single Bench

Advocate : K.K. Sud, with Mr. Jayant K. Sud, Mr. Vishal Dabas, Mr. Ujas Kumar and Mr. Chirag Khurana, for the Appellant; Sunil Sharma, APP, for the Respondent

Final Decision : Allowed

Judgement

V.K. Shali, J.—This is a petition for grant of anticipatory bail in respect of FIR no. 67/2011, u/S 376/420/495 IPC registered by PS Crime Against Women Cell, Nanakpura. Briefly stated the facts of the prosecution case are that on 15.9.2010, the complainant one Geeta, a permanent resident of Dehradun filed a complaint in Crime Against Women Cell, Nanakpura, New Delhi against the present petitioner/Jagdish Nautiyal working as a Private Secretary in the National Human Rights Commission. In the said complaint, the complainant levelled allegations that she was married to one Sushil Kumar in the year 1994 and from the said wedlock, she was blessed with a daughter, who was born in December, 1995. Unfortunately, the husband of the complainant Sushil Kumar expired because of heart attack on 22.3.2010. The present petitioner was on friendly terms with the deceased husband of the complainant and he started visiting the complainant. The present petitioner is alleged to have made a proposal of marriage to the complainant and stated that he was unmarried and he would take care of the complainant as well as her daughter. Believing the representation of the present petitioner, the complainant is stated to have contracted the marriage on 10.5.2010 in Buddhist Temple, Mandir Marg, New

Delhi near Birla Mandir as per Hindu Law. Photographs and necessary documentations in this regard were completed. After the marriage on 10.5.2010, the petitioner applied for registration of the marriage on 17.5.2011 in the Marriage Registration Office, Dehradun whereupon, he filled up the requisite forms in his own handwriting and showed his status as unmarried. It is alleged by the complainant that after the marriage, the petitioner cohabited with the complainant. It is stated in the complaint that on 4.6.2010, the complainant learnt that the present petitioner was already married to one Sunita and was living with her at the address mentioned in the Memo of Parties. It is also stated by her that the petitioner was having two children from the said marriage. Because of these revelations, the complainant confronted the petitioner, whereupon, the petitioner is stated to have started abusing, misbehaving, threatening the complainant to teach her a lesson. This resulted in strained relationship between the present petitioner and the complainant whereupon the present complaint was filed by the complainant alleging that she had been sexually exploited and her life has been spoiled by the present petitioner by obtaining her consent for marriage by misrepresentation. On the basis of the aforesaid allegations, a case of rape, cheating and bigamy was registered against the present petitioner.

2. The petitioner had earlier filed an application for grant of anticipatory bail in the Court of Sessions which was decided by the learned Sessions Judge on 29.8.12 holding that the allegations against the present petitioner are serious and it is not a fit case for grant of anticipatory bail.

3. Feeling aggrieved, the present petition for grant of anticipatory bail has been filed in the High Court.

4. I have heard Mr. Sud, the learned senior counsel for the petitioner as well as the learned APP. The private counsel representing the complainant had also assisted the learned APP.

5. The main contention of the learned senior counsel is that the petitioner has been falsely implicated in the instant case. It is stated that the petitioner and his wife were the Members of a Yoga club where the complainant also used to visit and she was aware of the fact that the petitioner is a married person. It is denied by him that the petitioner had contracted a marriage with the complainant. It is stated by him that it was only a friendly relationship between the petitioner and the complainant. It is also stated by him that in a Buddhist Mandir, no Hindu marriages can be contracted because no formalities are required to be carried out as is required to be done in an Arya Samaj Temple.

6. It is contended that the alleged incident is purported to have taken place on 17.9.2010 while as, the present FIR has been lodged on 15.9.2011 that is after more than a year. It is contended in the status report filed before this Court that the police has already seized the documents required for the purpose of investigation, therefore, no further custodial interrogation is required to be done.

It has also been submitted by him that the status report filed by the police shows that there were certain conversations going on between the petitioner and the complainant on certain specified telephone numbers. In order to show that the petitioner was not responsible for making calls, the learned senior counsel has contended that during the period from 01.5.2010 to 11.5.2010, the complainant had made 165 calls to the petitioner and his relations, the details of which have been furnished by him by way of an affidavit which will clearly show that it was the complainant who had been ringing up the petitioner on various numbers. It is further stated by him that the petitioner is prepared to join the investigation. It has also been stated that the petitioner has roots in the society and he is not going to run away from the processes of law and no useful purpose would be served by simply denying him the benefit of grant of anticipatory bail.

7. The learned APP has vehemently opposed the application for grant of anticipatory bail on the ground that the allegations made against the present petitioner are very serious in nature inasmuch as he has committed fraud not only qua the complainant but also with his first wife by concealing the fact that he was already married and still he contracted the second marriage. It has also been contended by him that custodial interrogation of the petitioner is required to recover the telephone instruments used in the conversations between the petitioner and the complainant. It has been contended by him that the consent which is purported to have been given by the complainant in the present case for the purpose of contracting marriage with the petitioner is not consent because it was obtained by misrepresentation inasmuch as the petitioner had represented himself to be an unmarried person while as, he was actually a married person. In this regard, the learned APP has also referred to a judgment of the Apex Court in case titled *Deelip Singh @ Dilip Kumar Vs. State of Bihar*, to contend that a consent which is obtained by misrepresentation is not a consent at all.

8. The learned APP has also contended that the State has already got non bailable warrants issued against the petitioner and, therefore, the petitioner does not deserve to be granted the benefit of anticipatory bail.

9. I have carefully considered the submissions made by the respective sides.

10. No doubt, the allegations made against the petitioner are very serious in nature but the severity of the allegations is not the only consideration which should result in denial or the grant of bail to the petitioner. The totality of circumstances deserves to be seen before a person is granted or denied the anticipatory bail. The Supreme Court in case titled *Siddharam Satlingappa Mhetre Vs. State of Maharashtra and Others*, has laid down that the Court should be loath to reject the grant of anticipatory bail inasmuch as it impinges on the personal liberty of a person. Meaning thereby, unless and until there is an imminent and a great imperative to have a custodial interrogation of an accused, the anticipatory bail does not deserve to be denied. In the instant case, assuming the allegations against the petitioner to be correct, at best, a case of consent of the complainant for contracting marriage having been obtained by

fraud or misrepresentation is made out. This fact does not require any custodial interrogation because the complainant herself has to testify before the Court as and when the petitioner is put to trial as to whether her consent was obtained by misrepresentation or fraud.

11. The contention of the learned APP that the telephone instruments are required to be recovered also does not convince me as being a "sufficient ground" for denying the grant of anticipatory bail to the petitioner. The recovery of instrument is not an important matter. It is not denied by either of the parties that conversations by using certain telephone numbers were made between the parties. This information has already been made available or got recovered by the respondent from the service provider. So much so, even the contents of the conversations which have been exchanged between the petitioner or his relatives with that of the complainant has also been recovered, therefore, the recovery of the instrument or the SIM number is of no consequence in advancing the case of the prosecution. The custody of the accused is not required to be granted to the police only on the whims and fancies of the complainant to satisfy her ego. In the instant case, the petitioner was not granted any police protection for the last more than a year and the police has not been able to arrest him till date. This clearly shows some kind of complicity on the part of the police in being loath in arresting the petitioner.

12. It has been further contended by the learned APP that the process u/s 82 Cr. P.C. has been issued against the petitioner inasmuch as he has fled away from the processes of law and, therefore, does not deserve to be enlarged on bail.

13. I do not agree with this contention of the learned APP that merely because process under Sections 82 and 83 Cr.P.C. has been issued against the accused that this should be a sufficient ground for denying the grant of anticipatory bail if it is otherwise made out. Every reasonable person who has approached the Court for grant of anticipatory bail will keep away from the investigation for sometime so that his bail application does not become infructuous.

14. In the instant case, the petitioner has been able to make out a case for grant of anticipatory bail on account of the fact that no recovery of any article is to be effected inasmuch as this is a case where all the articles have been seized by the police as per their status report. The case of the prosecution is that the consent of the complainant for the marriage was obtained by misrepresentation and under the guise of the so-called marriage or promise to marry the complainant was sexually abused by the accused. This can be proved by the complainant by entering into the witness box and it also does not require any custodial interrogation and consequent recovery of any object which is involved in the instant case.

15. There are two more considerations which are being taken into account for grant of anticipatory bail. Firstly, the petitioner is admittedly employed in National Human Rights Commission and has a fixed place of residence and,

therefore, there is no chance of his fleeing away from the processes of law or in other words, he has roots in the society.

16. So far as the allegations of the petitioner tampering with the evidence or threatening the witness are concerned, no doubt, a generalized statement has been made by the complainant that she has been threatened by the petitioner but she has not been able to show to the Court any cogent and prima facie evidence which would show that she has actually been threatened by the present petitioner. In any case, this aspect of the matter can be taken care of by putting a stringent condition on the petitioner.

17. The learned APP during arguments has placed reliance on the judgment of the Apex Court in Deelip Singh's case (supra). I have considered the said judgment. No doubt, the said judgment deals with the interpretation of the word "consent" holding that the consent obtained by force, misrepresentation or fraud, will not be a valid consent but in any case, the said judgment does not say that a person who is accused of having committed the offence of rape does not deserve to be enlarged on bail. On the contrary, that was a case where the person concerned was convicted and sentenced by the trial court as well as by the High Court and he had preferred the SLP before the Apex Court. Therefore, the factual matrix of the present case is totally different from the facts of Deelip Singh's case. Accordingly, the said judgment is distinguishable. Similarly, in other judgment the custodial interrogation was required in the peculiar facts of the case or that a person was declared proclaimed offender does not ipso facto, imply that in all cases where a person declared as a proclaimed offender, the Court may not extend the benefit of anticipatory bail to him. Both these submissions are turned down.

18. Having regard to the aforesaid facts, I am inclined to admit the petitioner to the anticipatory bail on his furnishing a personal bond in the sum of Rs. 50,000/- with one surety of the like amount to the satisfaction of the IO/SHO/AO, subject to the following conditions:-

- (i) That the petitioner shall file an affidavit mentioning therein all the documents/instruments as are required by the police for the purpose of investigation have been either surrendered by him and the petitioner shall make himself available for the purpose of investigation on 04.12.2012 at 4.00 p.m. in the Crime against Women Cell and on all other dates as may be fixed by the CWC for investigation;
- (ii) He shall not leave the National Capital Region of Delhi without the permission of the trial court;
- (iii) He shall not threaten the complainant and her daughter by sending persons to the residence of the complainant to terrorize her as she has testified against him; and (iv) He shall not tamper with the evidence.

19. It is made clear that in case these conditions are violated, the complainant or the prosecutor shall be free to move an appropriate application for revocation of

the grant of bail to the present petitioner. Subject to the aforesaid conditions, the petition is allowed.