
(2009) 08 DEL CK 0159

In the Delhi High Court

Case No : Bail Application No. 1236 of 2009

Maresh Makhija

APPELLANT

Vs

State (NCT of Delhi)

RESPONDENT

Date of Decision : 17-08-2009

Acts Referred:

Penal Code, 1860 (IPC) — Section 325, 376

Citation : (2009) 08 DEL CK 0159

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

Bench : Single Bench

Advocate : Nem, for the Appellant; Pawan Bahl, APP, for the Respondent

Final Decision : Dismissed

Judgement

V.K. Shali, J.—This is an application for grant of anticipatory bail by the petitioner in respect of FIR No. 159/2009 registered with P.S. Harinagar u/s 325/376 IPC.

2. The allegations against the petitioner are that merely five years back the petitioner who was known to the complainant had administered some sedatives in a piece of "Barfi" to the complainant as a consequent of which she fell unconscious and fell down. It is alleged in the complaint that the petitioner subjected the complainant to sexual assault against her will and also made a CD of the complainant in an objectionable manner. It is alleged that the petitioner thereafter continued to physically abuse and exploit the complainant by black mailing her and the complainant with a view to avoid being ridiculed and subjected herself to such a black-mail. It is also alleged that the petitioner had taken a sum of Rs. 1,48,000/- from the complainant which she used to get by way of rent from her tenants.

3. The complainant has also alleged that the petitioner on one particular day threw contraceptive on her and on another day smashed contraceptive which was full with semen on her body. On the basis of these allegations, the aforesaid FIR is registered against the petitioner on 23.5.2009.

4. I have heard the learned Counsel for the petitioner as well as the learned APP for the State and have gone through the record. The learned Counsel for the petitioner has contended that the complaint which has been lodged by the complainant making serious allegations of sexual assault is as a matter of fact totally false and frivolous and is actuated by ulterior considerations. It was urged by him that the falsity of the charges levelled by the complainant in the FIR is fortified from the fact that she remained silent for as long as five years and did not care to disclose the said fact to her husband even. It is also contended by the learned Counsel for the petitioner that the petitioner as a matter of fact is a married person and does not have any issue but both the family of the petitioners and the family of the complainant were known to each other for quite some time as they were living in the same locality and it was agreed by the petitioners that they would adopt a female child from the wedlock of the complainant and since this was not done by the petitioner, therefore, as a matter of reprisal, the complainant got the present false FIR registered against the petitioner. It was contended by the learned Counsel for the petitioner that the falsity of the allegations leveled by the complainant would be apparent from the fact that although the FIR has been lodged in 2009 on 23rd May, 2009 but around the same time and even after that she has been visiting and participating in various functions of the petitioner which is totally unnatural conduct on her part.

5. It was contended that the petitioner is already enjoying the interim protection against arrest and he has already been called by the local police and joined investigation. He is further prepared to subject himself to such conditions as this Court may like to impose while granting the anticipatory bail to the petitioner.

6. Both the counsel for the complainant as well as learned APP have contested the submissions made by the learned Counsel for the petitioner. It has been denied that this is a false and a concocted story which has been lodged by the complainant with the police. As a matter of fact, the learned Counsel for the complainant has contended that despite the case pending in Court, the petitioner has administered threats to the complainant for which purpose she has lodged a complaint with the local police as late as on 14.8.2009. It was also denied by the learned Counsel for the complainant that the present complaint has been lodged as a measure of reprisal against the petitioner for not having adopted her daughter.

7. So far as delay in lodging the complaint with the police both initially as well as the one which has taken place after lodging of the complaint are concerned that is being justified by the fact that the initial complaint got delayed because the complainant was being black mailed by the petitioner on account of CD having been prepared by the petitioner of the complainant in an objectionable manner which was being used as a threat to defame her in the society. As regards the delay of 12-13 days from the date of lodging the complaint and registration of FIR is concerned, the learned APP tried to explain the same that since there was

an initial delay, therefore, the facts had to be verified and brought to the notice of superior Officers before acting on the basis of the same.

8. I have carefully considered the submissions made before this Court and have gone through the judgments relied upon by the learned Counsel for the petitioner given by HMJ Shiv Narayan Dhingra in case titled Brij Mohan Verma v. State (NCT of Delhi) 2008 (2) JCC 931. So far as the bail having been granted in the facts of those cases is concerned, that would not be a ground for enlarging the petitioner on bail. There is no proposition of law laid down that in case there is a delay in lodging the FIR in respect of offence u/s 376 IPC and the delay is sought to be explained by giving the explanation that earlier the FIR could not be lodged as she was subjected to blackmail still the petitioner would be entitled to bail.

9. In the instant case, the delay may be on account of various reasons but that will be explained only during the course of appreciation of evidence when the case is being disposed of finally. No doubt there is a delay in the instant case which is to the tune of five years initially but there is a specific averment in the complaint that the petitioner had prepared a CD of the complainant. It is prima facie reasonable to believe that any woman placed in such a contingency would avoid lodging a complaint for being fearful of being exposed and ridiculed in the society to that extent the delay may not be a ground for enlarging the appellant on grant of anticipatory bail.

10. So far as the second contingency of delay of 12 days from the date of lodging the complaint and the registration of the FIR is concerned, that is equally not fatal as it is sought to be explained by the learned APP by giving various steps which were initiated by the local police before initial registration of the offence so as to ensure that there is no false implication.

11. As regard the plea of the petitioner that the complaint is actuated by ulterior considerations to secure revenge on account of non-adoption of the female child of the complainant. It can at best be a defence of the petitioner but certainly it will not be a ground where the complainant would risk her own character to be ridiculed by making false allegations of being subjected to sexual assault by a person. Therefore, this question can be decided and appreciated only after the petitioner has adduced his side of story of evidence before the Trial Court.

12. The investigations are still on and since there are allegations against the petitioner having prepared a CD of the petitioner in an objectionable manner which constitutes a very serious allegation qua the petitioner, therefore, apart from the fact that there were allegations of rape, I feel the totality of circumstances constitute prima facie very serious allegations against the petitioner which do not entitle him to be enlarged on anticipatory bail.

13. For the reasons mentioned above, the application or grant of anticipatory bail is dismissed. The interim protection granted to the petitioner on the first date of hearing i.e. 22.6.2009 stands vacated.