

(2019) 09 DEL CK 0123

In the Delhi High Court

Case No : Bail Application No. 1461 Of 2019

Rohit Sharma

APPELLANT

Vs

State Of Nct Of Delhi

RESPONDENT

Date of Decision : 16-09-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 41(1), 164, 438, 482
Indian Penal Code, 1860 — Section 34, 354, 406, 498A, 506, 511

Citation : (2019) 4 JCC 3648

Hon'ble Judges : Rajnish Bhatnagar, J

Bench : Single Bench

Advocate : Monika Arora, Kushal Kumar, Kamal Kumar Ghei, Maninder Singh, Dinhar Takiar, Sarthak Garg, Sankalp Kohli, Aekta Vats, Vikram Kalra

Final Decision : Dismissed

Judgement

Rajnish Bhatnagar, J

BAIL APPLN. 1461/2019 & CRL.M.(Bail) 1061/2019

1. This is an application filed under Section 438 Cr.P.C read with Section 482 Cr.P.C for grant of anticipatory bail in case FIR No. 225/18 U/s 498A/406/354/506/511/34 IPC registered at Police Station-Rajinder Nagar, Delhi.

2. Briefly stated the facts of the case are that on 06.12.2018, the present FIR was registered at PS Rajinder Nagar, Delhi on the basis of the complaint of the complainant in which she had levelled allegations of demand of dowry and cruelty against the petitioner as well as his entire family. On 10.12.2018, statement U/s 164 Cr.P.C. of the complainant was recorded in which she alleged that petitioner used to threaten her by showing gun for bringing more dowry and he also used to show her porn movies against her will and asked her to do as shown in porn movies and had sex forcefully. The complainant also made allegations of sexual harassment against her brother-in-law and father-in-law. According to her statement offence u/s 354 IPC was found to be made out.

However, in her initial complaint, the complainant had stated about attempt of sexual assault. Therefore, initially, the case was registered under section 354/511 IPC.

3. Arguments heard. Record perused.

4. It is argued by the Ld. counsel for the petitioner that the allegations levelled against the petitioner are false and he has been falsely implicated. It is further urged by the counsel that the photographs given by the complainant are of the wedding and nothing has been placed on record by the complainant showing that the petitioner owns the said pistol or it was kept in his house. It is further argued by the Ld. counsel for the petitioner that the petitioner is not the owner of the pistol and the same belongs to his friend Abhimanyu Chaudhary who had brought pistol and guns himself in the wedding just to fire in air and the petitioner had just held the pistol in his hand to get his picture clicked. It is further urged by the counsel that the allegations of unnatural sex by the petitioner and the allegations of demand of dowry against the petitioner are false. It is further urged by the Ld. counsel for the petitioner that the allegation of threatening with an firearm by the petitioner is an afterthought. It is further urged by the Ld. counsel for the petitioner that the petitioner is joining and co-operating in the investigation. Ld. counsel for the petitioner has relied upon H.B. Chaturvedi Vs. CBI, 2010 (3) JCC 2109, State of Rajasthan V. Balchand, (1977) 4 SCC 308 and Arnesh Kumar Vs. State of Bihar (2014) 8 SCC 273, Udit Raj Poonia Vs. State of NCTD (II (2017) CCR 133 (Del.)) and Court on its own motion Vs. CBI (109 (2003) DLT 494), Social Action Forum for Manav Adhikar and another Vs. Union of India Ministry of Law and Justice and others, Writ Petition (Civil) No 73 of 2015 with Criminal Appeal No. 1265 of 2017 and Writ Petition (Criminal) No. 156 of 2017 decided by the Hon'ble Supreme Court on September 14, 2018 and prayed for grant of anticipatory bail to the petitioner.

5. On the other hand, it is urged by the Ld. Addl. PP for the state assisted by the Ld. counsel for the complainant that the petitioner is in possession of huge quantity of complainant's jewellery and to recover the istridhan his custodial interrogation is required. It is further urged by the Ld. Addl. PP for the state that custodial interrogation of the petitioner is also required for the purpose of recovery of weapons/firearms which according to the complainant have been used at the time of extending threats to her. It is further argued by the Ld. Addl. PP for the state that during investigation the evidence in the form of photographs and video of the marriage were provided by the complainant and the investigation from the photographer is still pending who had video-graphed and taken the photographs in the marriage. It is further argued by the Ld. Addl. PP for the state that during investigation when petitioner was asked to produce the arms with their license used by him, he denied the allegations and told that the said arms belong to his friend Abhimanyu Choudhary, so a notice U/s 41.1 Cr.P.C was served to Abhimanyu Choudhary on 12.07.2019 and during investigation Abhimanyu Chaudhary denied the guns to be his and replied that the guns in the

photographs were of the relative of petitioner. On instructions from the IO, it is further urged by the Ld. Addl. PP or the state that the petitioner is not co-operating in the investigation and is not providing truthful account of the sequence of events. It is further submitted by the Ld. Addl. PP that the petitioner is giving evasive replies and is not cooperating in the investigation while he is under the protective umbrella of interim orders. He prayed for the dismissal of the bail application.

6. I have perused the judgments (supra) relied upon by the Ld. counsel for the petitioner. There is no dispute with regard to the law laid down in the said judgments, but with due regards, the same are not applicable to the facts of the present case. Moreover, it is also settled that each case has to be decided on its own peculiar facts and circumstances. In the instant case, the Ld. Addl. PP for the state on the instruction from the IO submitted that the petitioner is not co-operating in the investigation and is not disclosing the truthful account with regard to the ownership of the guns in question and taking advantage of the interim protection granted to him.

7. The Hon'ble Supreme Court in CBI Vs. Anil Sharma (1997) 7 SCC 187 observed as follows :

"6. We find force in the submission of the CBI that custodial interrogation is qualitatively more elicitation-oriented than questioning a suspect who is well ensconced with a favourable order under Section 438 of the Code. In a case like this effective interrogation of a suspected person is of tremendous advantage in disinterring many useful informations and also materials which would have been concealed. Success in such interrogation would elude if the suspected person knows that he is well protected and insulated by a pre-arrest bail order during the time he is interrogated. Very often interrogation in such a condition would reduce to a mere ritual. The argument that the custodial interrogation is fraught with the danger of the person being subjected to third-degree methods need not be countenanced, for, such an argument can be advanced by all accused in all criminal cases. The Court has to presume that responsible police officers would conduct themselves in a responsible manner and that those entrusted with the task of disinterring offences would not conduct themselves as offenders."

8. Therefore, relying upon the judgment CBI Vs. Anil Sharma (Supra), and looking into the allegations against the petitioner which are grave and serious in nature, the fact that weapons/firearms which were allegedly used by the petitioner at the time of issuing threats to the complainant are yet to be recovered and the petitioner is also not co-operating in the investigation, I am not inclined to grant anticipatory bail to the petitioner. The bail application is, therefore, dismissed.

9. In view of the order passed in Bail Appln. 1461/2019, the Crl.M.(Bail) 1061/2019 also stands dismissed.