

(2020) 01 DEL CK 0604

In the Delhi High Court

Case No : Bail Application No. 189 Of 2020, Criminal Miscellaneous Application
No. 1589 Of 2020

Sandeep Singh Kadyan

APPELLANT

Vs

State Of Nct Of Delhi

RESPONDENT

Date of Decision : 24-01-2020

Acts Referred:

Indian Penal Code, 1860 — Section 120B, 377, 420, 467, 468, 471, 494, 498A, 506
Code Of Criminal Procedure, 1973 — Section 161, 164, 438

Citation : (2020) 01 DEL CK 0604

Hon'ble Judges : Brijesh Sethi, J

Bench : Single Bench

Advocate : S.K.Saxena, Yogender Kumar, S. Kadayan, Kapil Chandra,
G.M.Garooqui

Final Decision : Dismissed

Judgement

Brijesh Sethi, J

1. Vide this order, I shall dispose of an anticipatory bail application filed under section 438 Cr.P.C. on behalf of the petitioner Sandeep Singh Kadyan in FIR No. 0359/2019 u/s. 498A/377/506/34 IPC, PS Dwarka North.

2. Ld. Counsel for the petitioner has prayed for anticipatory bail on the ground that petitioner is innocent and has been falsely implicated. It is submitted that petitioner is the husband of the complainant and their marriage was solemnized on 12/05/2013. It is further submitted that complainant is working as constable in Crime Branch and has filed multiple complainants against the petitioner and his family members but in none of the complaints which were filed earlier there is mentioning of the allegations as mentioned in the present FIR. It is further submitted that the alleged incidents with respect to Section 377 IPC had taken for the first time in June 2018 but during this period the petitioner was not medically fit even to walk and therefore, it was not possible for the petitioner to perform such an act in such a poor health. It is further submitted that all the

allegations as levelled by the complainant in the present FIR are false and baseless and the FIR lodged by the Complainant is concocted and false and an abuse of the process of law. It is further submitted that there is an apprehension that police may arrest the petitioner in present FIR bearing no. 359/2019 and, therefore, it is prayed that in the event of arrest, he be released on anticipatory bail.

3. Ld. Counsel for the petitioner, in support of its submissions, has relied upon 'Kuldeep Kapoor & Anr v. State, NCT of Delhi', Bail Appl No. 584/2017 decided on 19.07.2018. I have gone through the order on the bail application. However, the same is distinguishable on the basis of the facts and circumstances stated therein.

4. The anticipatory bail application is opposed by the Ld. APP for the State on the ground that the allegations against the petitioner are serious in nature. Petitioner has forcefully performed unnatural sex with his wife and also physically assaulted her. He has, therefore prayed for dismissal of the anticipatory bail application.

5. I have considered the rival submissions. The present case FIR No. 359/19 u/s. 498A/377/34 IPC, PS Dwarka North, New Delhi was registered on 06.09.2019 on the complaint of complainant made before the Assistant commissioner of Police, CAW Cell, Dwarka District, New Delhi wherein she has alleged that her parents solemnized her marriage as per Hindu rituals on 12-05-2013. It was her second marriage with consent of both families. Soon after her marriage, her husband and his family members started physically and mentally harassing her and taunted her by many ways saying that she was not a suitable lady for their family. On February, 2014 complainant had given birth to a male child out of this wedlock. Complainant alleged that at the time of kuan puja, her mother -in law demanded more things from her parents. Petitioner was having relation with a foreigner lady namely Delphine Jade Marie and due to this reason, he did not behave properly with complainant. When she objected to such relationship, petitioner threatened her for divorce. Petitioner had performed forcibly unnatural sex with her. On 15.12.2018, petitioner assaulted the complainant physically. During course of investigation, statements U/S 161 Cr.PC. of the complainant and her relatives were recorded. Statement of complainant u/s 164 Cr.PC was also recorded before Ld. MM, Ms. Uditia Jain in which she has reiterated her previous version. During the course of investigation, complainant has filed an application that petitioner is threatening her and, therefore, section 506 was also added in present case.

6. Ld. Counsel for the petitioner has argued that in the earlier FIR bearing no. 226/2018 dated 07.09.2018 filed by the complainant under Section 420/467/468/471/494/120B IPC PS Crime Branch, allegations of unnatural sexual intercourse or dowry harassment have not been mentioned and this clearly shows that the present FIR has been lodged just to harass the petitioner. However, the court is of the view that the FIR bearing no. 226/2018 was registered on the ground that petitioner ran away with one Delphine Jade Maria

and married her whereas the present FIR has been registered for harassment as well as performing unnatural sexual intercourse by the petitioner. Even if these facts were not mentioned in the earlier complaint by the complainant because of the fear of getting socially defamed and also because of the fact that she was being constantly threatened that she would be killed if she would not withdraw her case, it does not mean that her version should not be believed. Non-mentioning of certain facts in the earlier FIR does not dilute the offences alleged in the present FIR. The petitioner's defence that he was not well and incapable of performing alleged offence under Section 377 IPC cannot be considered at this stage when the investigation is at a very initial stage.

7. In view of the above facts appearing on record and keeping in view the allegations levelled against the petitioner that he has committed unnatural sexual intercourse with the complainant and also physically assaulted her, no grounds for anticipatory bail are made out. The anticipatory bail application is, therefore, dismissed and stands disposed of accordingly.