
(2015) 09 DEL CK 0383

In the Delhi High Court

Case No : Bail Application No. 1768/2015

Sanjay Sharma

APPELLANT

Vs

The State NCT of Delhi

RESPONDENT

Date of Decision : 01-09-2015

Acts Referred:

Citation : (2015) 3 JCC 2138 : (2016) 1 RCR(Criminal) 31

Hon'ble Judges : Indermeet Kaur, J.

Bench : Single Bench

Advocate : Sunil K. Mittal, R.S. Goswami, Vipin K. Mittal and Anshul Mittal, Advocates, for the Appellant; Akshai Malik, A.P.P., Sanjita, Inspector, Sudhir Nandrajog, Senior Advocate, Manish Vashisht, Sameer Vashisht, Mahavir Sharma and Amit K. Thakur, Advocates, for the Respondent

Final Decision : Allowed

Judgement

Indermeet Kaur, J.

CrI. M.A. No. 12462/2015 (Exemption)

Exemption is allowed subject to all just exceptions.

Application disposed of.

BAIL APPLN. 1768/2015

1. Learned senior counsel for the petitioner is aggrieved by the order dated 20.8.2015 wherein the Sessions Judge had refused further anticipatory protection to the petitioner; his application stood dismissed. Submission is that the impugned order had not taken all the independent facts into the circumference while dismissing the application. Attention has been drawn to the order passed by this Court wherein interim protection had been granted to the petitioner with a direction that he would be moving an appropriate application before the Sessions Judge and in case the Sessions Judge was of the view that the petitioner was to be arrested, one week notice was to be given. It is in this

background that the impugned order was passed. Learned counsel for the petitioner vehemently submits that his complaint dated 02.02.2013 alleging extortion against the complainant had been filed prior in time to the present F.I.R. wherein allegation of rape had been levelled against the petitioner by the complainant. Submission being that this F.I.R. has been registered on 04.3.2013 on an incident of 28.01.2013; besides the fact that there is no explanation for the 35 days delay; even otherwise this is a counter blast to the earlier complaint made by the complainant which is dated 02.20.2013. Attention has also been drawn to the status report which has been filed by the Investigating Agency before this Court wherein this factum had been noted. It had also been noted in the status report that the complainant was identifying herself under three different names; her statement that she was a student of Jhunjhunu Rajasthan also did not appear to be correct. Submission being reiterated that the complainant is deliberately maligning the petitioner. Charge sheet has since been filed. Custodial interrogation of the petitioner is no longer required. Petitioner undertakes to appear before the Trial Judge as and when the matter is taken up for hearing. He has also not misused the interim order which had been granted in his favour. He be enlarged on bail. Arguments have been countered both by the learned APP for the State as also by the learned senior counsel for the complainant. It is pointed out that the submission of the petitioner that a complaint dated 02.0.2013 had been filed by him pursuant to which an F.I.R. for extortion had been registered against complainant is an incorrect statement. Attention has been drawn to that F.I.R. i.e. F.I.R. No. 91/2013 which had been registered on 22.3.2013 on the complaint of the petitioner; submission being that in this F.I.R. there is no mentions at all of any complaint dated 02.02.2013. This is a false submission. The petitioner has not come to the Court with clean hands. Additional submission being that the allegations in the charge sheet clearly show that the allegations against the petitioner are serious, unless and until the victim comes into witness box, the petitioner should not be enlarged on bail.

2. Record had been perused.

3. This Court on 08.7.2015 had noted the submissions made by the learned counsel for the petitioner which included his submission that he had made a complaint against complainant for extortion which was on 02.02.2013. His additional submission that the relationship between the parties i.e. complainant and the petitioner was consensual had also been noted. It had also been noted that the charge sheet has been filed and on the next date fixed before the Trial Judge the petitioner had been advised to move an appropriate application for bail. The Trial Judge had dismissed that application.

4. The averments made in the present complaint have been perused. The fact that the parties were known to one another prior to the incident is not disputed. Contents of the F.I.R. disclose that the complainant met the petitioner about 8-9 months ago. She is a 28 year old lady. Incident is dated 28.01.2013. Complaint

was lodged by her on 04.3.2013 i.e. after a gap of 35 days pursuant to which this F.I.R. had been registered. The fact whether the petitioner had filed a complaint prior in time against complainant i.e. on 02.0.2013 for extortion is a matter yet under investigation in that independent F.I.R. (F.I.R. No. 91/2013).

5. Noting the above factual matrix as also the fact that the charge sheet has been filed and there is no allegation that the petitioner has misused the interim bail which has been granted to him and the additional submission that the present F.I.R. has been registered after an unjustifiable delay of 35 days, this Court without delving any further into the merits of the controversy, at this stage deems it fit that on the undertaking of the petitioner that he will appear before the Trial Judge on all dates (unless specifically exempted) the petitioner be enlarged on bail. Accordingly, in the event of arrest, the petitioner be admitted to bail on his furnishing a personal bond in the sum of Rs. 20,000/- with one surety of like amount subject to the satisfaction of the Investigating Officer. With these directions application disposed of.

Order dasti under signatures of the Court Master.