

(2020) 01 DEL CK 0073

In the Delhi High Court

Case No : Bail Application No. 1289 Of 2019

Shaukat @ Aayan

APPELLANT

Vs

State Of Nct Of Delhi

RESPONDENT

Date of Decision : 10-01-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 82, 164, 438

Indian Penal Code, 1860 — Section 328, 376, 406

Protection Of Children from Sexual Offences (POCSO) Act, 2012 — Section 4

Citation : (2020) 01 DEL CK 0073

Hon'ble Judges : Chander Shekhar, J

Bench : Single Bench

Advocate : B.L. Madhukar, Devendra Kumar, Amit Chadha

Final Decision : Dismissed

Judgement

Chander Shekhar, J

1. The present application has been filed by the petitioner under Section 438 of the Code of Criminal Procedure, 1973 (Cr. P.C) for the grant of anticipatory bail.

2. Briefly stated, the case of the prosecution is that, on 4.8.2018, a case vide FIR No.224/18, under Sections 376/328/406 of the Indian Penal Code, 1860 (IPC) was registered in PS: Patel Nagar, Delhi on the complaint of "N", wherein she alleged that, on 26.5.2018, she went to Subhash Nagar to attend her class. After the completion of the class, she along with her friend Khushi and 9-10 other girls went to Moments Club, Netaji Subhash Place, where two boys Aayan (the petitioner) and Abhay came in contact with the complainant and her friend Khushi and they exchanged their mobile numbers. Thereafter, they dropped them at Jahangirpuri Metro Station. On 29.5.2018, the petitioner asked the complainant to come at Subhash Nagar Metro station along with her friend Khushi. When they reached at the Metro Station, the petitioner and his friend, Abhay met them and took them to Hotel Royal Heights, Patel Nagar, Delhi in their car. The petitioner and his friend Abhay went inside the hotel and after 5

minutes, they took the complainant and her friend Khushi inside room No.303 of the hotel. Thereafter, Abhay took Khushi in room No.302. Then, the petitioner forcefully established physical relations with the complainant. After that, the petitioner and Abhay took the complainant and her friend Khushi to some chemist shop and gave them some medicines. The complainant further alleged that one day, the petitioner asked for some money for his mother's treatment. On 13.07.18, the complainant and her friend Khushi took jewellery from the house of Khushi and went to Jahangir Puri Metro Station, where the petitioner met and took the jewellery from Khushi. However, later on, he returned some artificial jewellery to Khushi. Thereafter, the present FIR was registered and investigation was taken up.

3. During investigation, the victim was medically examined vide MLC No.288/18 at Lady Harding Medical College, New Delhi and the Doctor mentioned in the MLC report that "she refused for her internal examination and sampling".

4. Thereafter, the statement of the complainant was recorded under Section 164 of the Cr.PC. wherein she corroborated her version stated in the FIR.

5. In the course of investigation, the Hotel record dated 29.5.2018 was obtained and visitor's entry register was checked where no entry by the names of Aayan and Abhay was found. The DVR of the Hotel was seized in case FIR No.223/18 registered on the complaint of Khushi (friend of the complainant) and was sent to Forensic Science Laboratory, Rohini, Delhi for opinion.

6. Thereafter, search efforts were made to find the petitioner, but he absconded and did not join the investigation. On 7.1.2019, the petitioner was declared proclaimed offender by the Sessions Court.

7. It is pertinent to mention that the friend of the complainant, Khushi has also lodged an FIR No.223/18 dated 4.8.2018, under Sections 376/328/406 of the IPC and Section 4 of the Protection of Children from Sexual Offences Act, 2012 (POSCO Act) against the petitioner as well as the other accused Abhay.

8. Earlier also, the petitioner had moved an application under Section 438 of the Cr.P.C. before this Court which was dismissed as withdrawn on 29.3.2019.

9. The Additional Sessions Judge dismissed the application filed by the petitioner under Section 438 of the Cr.P.C. vide order dated 4.4.2019 on the ground that the accused has already been declared proclaimed offender.

10. Anticipatory bail may be granted when there is material on record to show that prosecution was inherently doubtful or where there is material on record to show that there is a possibility of false implication. However, when the element of criminality is involved and/or the custodial interrogation is required and/or the other aspects and facts are required to be unfolded during investigation, the applicant is not entitled for anticipatory bail.

11. It is also well-settled law that while considering the question of grant of

anticipatory bail, the Court prima facie also has to look into the nature and gravity of the alleged offence and the role of the accused. The Court is also bound down and must look into, while exercising its power to grant bail, the antecedents of the applicant as well as the possibility of the applicant fleeing from justice, apart from other factors and parameters in view of the facts of each and every case.

12. It is not disputed by the learned counsel for the petitioner that the petitioner has been declared proclaimed offender by the Sessions Court vide order dated 7.1.2019.

13. In the case of Lavesch v. State (2012) 8 SCC 730 and State of Madhya Pradesh v. Pradeep Sharma (2014) 2 SCC 171, the Supreme Court held that normally when an accused is declared a proclaimed offender he should not be granted anticipatory bail. In Lavesch (supra), it was held as under:

"12.From these materials and information, it is clear that the present appellant was not available for interrogation and investigation and was declared as "absconder". Normally, when the accused is "absconding" and declared as a "proclaimed offender", there is no question of granting anticipatory bail. We reiterate that when a person against whom a warrant had been issued and is absconding or concealing himself in order to avoid execution of warrant and declared as a proclaimed offender in terms of Section 82 of the Code he is not entitled to the relief of anticipatory bail."

14. It is not the case of the petitioner that the petitioner was declared a proclaimed offender without his knowledge. Learned counsel for the petitioner has not been able to point out the steps taken by the petitioner for setting aside the order dated 7.1.2019 declaring the petitioner as a proclaimed offender.

15. The law is well-settled that a person who seeks protection of law must submit to the process of law. The petitioner, in this case, has already been declared a proclaimed offender by the Sessions Court vide order dated 7.1.2019 and has not come to the Court with clean hands.

16. In this case, the material on record, prima facie even otherwise does not, in any manner, reflect that the prosecution is inherently doubtful or there is a possibility of false implication. The element of criminality is allegedly involved.

17. Taking into consideration the facts as discussed hereinabove as well as the role of the petitioner, severity of the punishment and the impact of the grant of the anticipatory bail to the petitioner upon the society besides the fact that the petitioner has already been declared a proclaimed offender by the Sessions Court, the anticipatory bail application of the petitioner is liable to be dismissed. The same is accordingly dismissed.