

(2020) 11 DEL CK 0013

In the Delhi High Court

Case No : Bail Application No. 1939 Of 2020, Criminal Miscellaneous Application No. 10061, 10062 Of 2020

Swami Ganeshanand

APPELLANT

Vs

State (Nct Of Delhi) & Anr

RESPONDENT

Date of Decision : 03-11-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 438, 438(1), 438(4), 482
Indian Penal Code, 1860 — Section 34, 302, 323, 341, 354, 354A, 498A, 506, 509
Protection of Children from Sexual Offences Act, 2012 — Section 4, 6, 8, 12

Citation : (2020) 11 DEL CK 0013

Hon'ble Judges : Prathiba M. Singh, J

Bench : Single Bench

Advocate : K.K. Manan, Udit Bali, Raghuveer Verma, Rakhi Dubey

Final Decision : Dismissed

Judgement

Prathiba M. Singh, J

1. The present petition has been filed seeking anticipatory bail under Section 438 read with Section 482 of the CrPC. The case against the Petitioner

arises out of FIR No.215/2020 under Sections 354-A and 509 of IPC and Section 12 of Protection of Children from Sexual Offences Act, 2012

(hereinafter, 'POCSO Act') registered at PS Govind Puri.

2. The Complainant, aged 17 years old, had alleged that on 14th May, 2020, at about 11:00 P.M while she was studying in her house, the Petitioner had

clicked 4 to 5 photographs of her and made obscene gestures towards her. It was further alleged that the Petitioner had pointed towards the

Complainant and abused her in filthy language. The incident was not reported immediately. However, on 14th June, 2020, the Complainant's

mother and the Complainant reported the incident and an FIR was registered.

3. The case of the Petitioner is that the allegations made in the complaint are false. Mr. Manan, Id. Senior Counsel submits that even if the case of the

Complainant is taken at the highest, Section 354-A and Section 509 IPC are bailable offences and under Section 12 of the POCSO Act, the maximum

sentence would be three years. Under these circumstances, he submits that the Petitioner is entitled to bail. He further submits that under similar

circumstances in *Joginder Kumar v. State* (Bail Appln. 2364/2018) and *Umesh Kumar v. State* (NCT of Delhi) (Bail Appln. 2418/2016), Id. Single

Judges have granted bail.

4. Mr. Manan, Id. Senior Counsel, further submits that after the filing of this petition, during the period when interim protection was granted by this

Court, the Petitioner has moved out of the colony where the Complainant resides, in order to avoid any allegations of harassment or threats against

him. He submits that the Petitioner now resides at E-16, DDA Banquet Hall, Sant Nagar, Near ISKCON Temple, East of Kailash, New Delhi. It is

further submitted that the Petitioner's family consists of his wife, a daughter who is of marriageable age, and a son. He also submits that the crime

is not so heinous, so as to warrant custodial interrogation or judicial custody.

5. Reliance is placed by Mr. Manan upon the judgment of the Supreme Court in *Arnesh Kumar v. State of Bihar*, (2014) 8 SCC 273, to argue that the

Supreme Court has clearly laid down in the said judgment that mechanical and casual arrests should be avoided, even in cases under Section 498-A of

the IPC. He submits that the directions passed in the said judgment shall not only apply in proceedings under Section 498-A, but also in cases where

the punishment for the offence is less than seven years, or may extend up to seven years. He submits that the present case is squarely covered by the

judgment in *Arnesh Kumar* (supra). Accordingly, he states that the Complainant's apprehensions no longer exist, and the Petitioner can be

extended protection by this Court.

6. Insofar as the submission of the Complainant that there are other FIRs against the Petitioner is concerned, Mr. Manan submits that FIR

Nos.349/2020 and 350/2020 are FIRs which are filed due to some other civil disputes which exist with a third party. He further submits that these

FIRs do not show that the Petitioner is a habitual offender.

7. On behalf of the Complainant, Ms. Rakhi Dubey, Id. counsel, submits that this is a case of a heinous offence being committed, considering that the

Complainant is less than 18 years of age. She further submits that even after this Court had granted interim protection to the Petitioner, threats have

been extended to the Complainant and her family. She submits that there are many other FIRs which have been lodged against the Petitioner by

women in the neighbourhood, and he is a habitual offender. Reliance is placed by Ms. Rakhi Dubey, Id. counsel, on the following judgments:

1) Prasanta Kumar Sarkar v. Ashish Chatterjee and Anr. (SLP (Crl.) No. 4590/2010)

2) State of Bihar v. Rajballav Prasad @ Rajballav pd. Yadav (Crl. Appeal No. 1141/2016)

3) Anil Kumar Singh alias Anil Singh v. High Court of Judicature at Patna, through its Registrar (WP(Crl.) No. 293/2020)

4) State of Kerala v. Aboobacker P. (Crl MC. No. 8802/2018)- Kerala HC

8. Ms. Dubey further submits that the Petitioner, being a person who claims to be a Yoga teacher, has to have a high sense of responsibility in the

society and ought not be granted any protection by this Court.

9. Mr. Raghuwinder Verma, Id. APP submits that the Petitioner may be directed to give his full address and the same would be verified. In any event,

he should not be allowed to enter the area where the Complainant or her family resides and no threats can be extended considering the nature of the

allegation in the complaint.

10. Mr. Manan seeks to distinguish the judgments which are cited by the Complainant on the ground that two of the cases cited which are related to

the POCSO Act involve charges under Sections 4, 6 and 8 of the said Act, where the punishment would be life imprisonment. He further submits that

the other case cited relates to Section 302 of the IPC, and none of the other judgments are applicable to the present fact scenario.

11. Heard Id. counsels for the parties and perused the records. The allegations in the present case by the Complainant are that the Petitioner herein

took photographs of the minor Complainant, committed indecent acts, made obscene gestures towards her and used abusive/filthy language.

12. As per the status reports filed by the police, the investigation is already underway. The Petitioner had during the course of investigation, moved an

application before the Additional Sessions Judge (hereinafter, 'ASJ') seeking anticipatory bail. The same was dismissed by the Id. ASJ on 7th

July 2020. He filed another petition for anticipatory bail which was also rejected on 23rd July 2020. The status report further clarifies that two other

FIRs which are stated to be pending against the Petitioner, i.e. FIR No. 349/2020 and FIR No. 350/2020, are cross-FIRs between the Petitioner's

family and another family. The same are in no way connected with the Complainant or her family. Importantly, the Court is also informed that there

are two other FIRs, being FIR Nos. 164/2020 and 280/2020, which have been registered against the Petitioner, both at PS. Govind Puri, New Delhi.

Certain other complaints are also stated to be pending against the Petitioner including for registration of an FIR under provisions of the Scheduled

Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989.

13. Insofar as the installation of the camera is concerned, the status report confirms that the Petitioner had installed the camera in front of the house

of the Complainant. In the second status report, the Court has also been informed that during the course of investigation, efforts were made to arrest

the Petitioner, but he has absconded and thereafter preferred the two anticipatory bail petitions before the Id. ASJ.

14. Insofar as the other pending FIRs are concerned, the details of the same, in the status report, are as under:

â€¢ FIR Nos. 349/2018 and 350/2018 â€" These are cross FIRs which relate to disputes between 2 families. The matter was settled and the FIRs have been quashed.

â€¢ FIR No. 280/2020 â€" This FIR, under sections 354-B/509 IPC, was registered on 12th June 2020 at about 12:30 PM at the instance of another

lady, in the same neighbourhood, who had made allegations that while she was passing by on the street, the petitioner started abusing her in filthy

language and after some time she saw the Petitioner making a video of her and making obscene gestures towards her. The said case is pending

against him. In this FIR, investigation has been completed, a draft chargesheet has been prepared and the final charge sheet is yet to be filed before

the concerned court.

â€¢ FIR No. 164/2020 â€" This FIR, under sections 323/341/354/506/34 of the IPC, is also registered on the basis of a complaint by another lady, on

14th May 2020, who resides in the same neighbourhood. She has alleged that the Petitioner was abusive towards her and her son and had obscenely misbehaved with her.

15. On the first date of hearing this petition, the Petitioner agreed to join the investigation. Accordingly, he was directed to join the investigation and it was also directed that no coercive steps would be taken against him. Notice was also issued to the Complainant. On 5th August 2020, after hearing the Complainant's mother, certain further conditions were imposed on the Petitioner while continuing the interim order. The Complainant was allowed to avail the services of a legal aid lawyer and was also permitted to file her objections to the petition. The Complainant then filed her reply to the Petition. In the reply she opposed the grant of bail and alleged that the Petitioner continued to level threats. Along with the reply, the complainant annexed a photograph of a painted board which read: "We will be back in the Game Bitches."

16. Upon perusing the reply and the photograph filed by the Complainant, a further status report was called for after ascertaining as to who was responsible for painting the above sentence. In respect of this, the status report filed stated that no conclusion could be arrived at as to who painted this at the

17. In the third status report, the police confirmed that the new address given by the Petitioner is correct, and that the Petitioner has remained in contact with the Investigating Officer on a daily basis, during the time of his interim protection. Insofar as the CCTV cameras are concerned, it was stated that the same were reinstalled by the sister-in-law of the Complainant and the Petitioner had no connection with the same.

18. Vide a further status report, the police have stated, in respect of FIR Nos. 164/2020 and 280/2020, that the investigation is complete and the chargesheet is to be filed.

19. It is in this background that the plea for anticipatory bail is to be considered by this Court.

20. The law on anticipatory bail is well settled after the judgment of the Supreme Court in *Sushila Aggarwal and Ors v. State (NCT of Delhi)* and

Ors., 2020 SCC OnLine SC 98. In the said judgment, the Supreme Court has held that except the specific offences provided in Section 438(4) of the

CrPC, by the CrPC Amendment Act, 2018, no offence stands excluded from the purview of Section 438 of CrPC. The Supreme Court observed:

“68. For the above reasons, the answer to the first question in the reference made to this bench is that there is no offence, per se, which stands

excluded from the purview of Section 438, - except the offences mentioned in Section 438 (4). In other words, anticipatory bail can be granted, having

regard to all the circumstances, in respect of all offences. At the same time, if there are indications in any special law or statute, which exclude relief

under Section 438 (1) they would have to be duly considered. Also, whether anticipatory offences should be granted, in the given facts and

circumstances of any case, where the allegations relating to the commission of offences of a serious nature, with certain special conditions, is a matter

of discretion to be exercised, having regard to the nature of the offences, the facts shown, the background of the applicant, the likelihood of his fleeing

justice (or not fleeing justice); likelihood of co-operation or non-co-operation with the investigating agency or police, etc. There can be no inflexible

time frame for which an order of anticipatory bail can continue.”

21. The Supreme Court in its final conclusions observed:

“xxx

(3).“While considering an application (for grant of anticipatory bail) the court has to consider the nature of the offence, the role of the

person, the likelihood of his influencing the course of investigation, or tampering with evidence (including intimidating witnesses),likelihood

of fleeing justice (such as leaving the country), etc.”.

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(4) Courts ought to be generally guided by considerations such as the nature and gravity of the offences, the role attributed to the

applicant, and the facts of the case, while considering whether to grant anticipatory bail, or refuse it. Whether to grant or not is a matter of

discretion; equally whether and if so, what kind of special conditions are to be imposed (or not imposed) are dependent on facts of the case,

and subject to the discretion of the court.”

22. Thus, the basic factors which courts will have to consider while exercising discretion for granting or not granting anticipatory bail are “

- (i) Nature/gravity of the offence;
- (ii) The role of the offender;
- (iii) The circumstances involved;
- (iv) Whether fair investigation would be possible?
- (v) Flight risk;
- (vi) Possibility of tampering with evidence;
- (vii) Possibility of intimidating witnesses;
- (viii) Other surrounding circumstances.

Ultimately, it is the court's discretion to grant or not grant protection in such an application for anticipatory bail.

23. In the facts of the present case, the three offences under which the FIR has been registered are Sections 354-A, 509 IPC and Section 12 of the POCSO Act. Insofar as Section 354-A and Section 509 of IPC are concerned, both the said offences are bailable offences. Insofar as Section 12 of the POCSO Act is concerned, the Complainant is a girl who is stated to be less than 18 years of age, on the date when the incident took place. The maximum punishment under Section 12 extends to three years and a fine.

24. The Petitioner in the present case initially did not cooperate with the investigation. As per the status report, he had absconded. The various status reports which have been filed also reveal that there are several other FIRs which have been lodged against the Petitioner for similar offences. In FIR Nos. 280/2020 and 164/2020, the status report states that the investigation is complete and the chargesheet is about to be filed. These two FIRs also appear to be made by completely unconnected women, residing in the same neighbourhood, filing complaints of abusive, obscene, inappropriate and impermissible conduct by the Petitioner. Thus, there are at least three complaints against the Petitioner where women have made allegations of abusive and inappropriate conduct. Considering that there are a number of criminal cases which have been filed against the Petitioner, his absconding is a matter of utmost seriousness. He did not cooperate in the investigation from the date of filing of the complaint, till the filing of this petition, i.e., for more than a month from 24th June 2020 till 28th July 2020. Even after the filing of this petition, allegations of threats being levelled have been raised.

When the police sought to investigate as to who had painted threats on the gate,

the investigation was inconclusive. Thus, an in-depth and thorough investigation is required in the matter.

25. The Petitioner is stated to be a Yoga teacher who has some influence in society. Moreover, while this Court had granted interim protection, the Complainant continued to submit before this Court that regular threats are being extended to her and her family by the Petitioner. Though, after the filing of this petition, he is stated to have cooperated in the investigation, the fact that he had initially absconded and the further fact that there are repeated allegations being made against him by women, residing in the same neighbourhood, are essential to be considered. In the present case, the investigation has not yet concluded and the Petitioner does have the propensity to influence the investigation.

26. The Id. Senior Counsel for the Petitioner has relied upon orders passed by Id. Single Judges of this court, wherein even in a case involving an offence under Section 12 of the POCSO Act, the Court has granted anticipatory bail. In the case at hand, the question is not whether this Court has the power to grant anticipatory bail or not. The question is whether the Petitioner deserves anticipatory bail or not in the peculiar facts and circumstances of this case.

27. The facts of each case are different. A perusal of the said two orders, relied upon the Id. Senior Counsel for the Petitioner, shows that multiple FIRs were not pending against the said petitioners, in those cases. Moreover, the complainants in those said cases, also, did not raise any allegations of threats being extended against them during the pendency of the anticipatory bail application.

28. In light of various FIRs having been registered against the Petitioner in this case, and similar complaints having been made by other unconnected women, from the same neighbourhood, against him, along with the fact that he had initially absconded from investigation, this Court is inclined to reject the prayer for anticipatory bail.

29. The Id. Senior Counsel has vehemently argued that the Petitioner has shifted from the neighbourhood of the Complainant, and has given a new verified address where he is residing with his brother. However, this court is not persuaded by this simple fact, as there are various matters that may require to be investigated thoroughly considering the background facts involved.

30. Accordingly, the petition is dismissed. The Petitioner is directed to immediately surrender before the authorities. The Petitioner's remedies to seek regular bail, however, are kept open. The observations in this order shall not prejudice the Petitioner in any manner, on merits. All pending applications are also disposed of.