
(2013) 10 DEL CK 0256

In the Delhi High Court

Case No : Bail Appln. No. 1765 of 2013

Vijeta

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 09-10-2013

Acts Referred:

Citation : (2014) 1 JCC 334

Hon'ble Judges : Sunita Gupta, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Sunita Gupta, J.—This is an application for grant of bail u/s 439 Cr.P.C. in case FIR No. 324/2013 under Sections. 376/495 IPC registered at Police Station Vasant Kunj. FIR in the instant case was registered on the complaint of Megha wherein she alleged that she is physically handicapped, Mahinder @ Manish got married to her fraudulently by impersonating his wife to be his sister and fraudulently raped her and destroyed her life. She came to know from T.V. news channel that Vijeta who impersonated herself as sister of Manish @ Mahinder is wife of Manish and has a daughter too. On the basis of this complaint, FIR under Sections 376/495 IPC was registered.

2. It is submitted by learned counsel for the petitioner that both Sections 376/495 IPC are not attracted in the instant case, inasmuch as, a bare perusal of the FIR reveals that no case u/s 376 IPC is made out. The applicant, being a lady, cannot be charged u/s 376/495 IPC. There are no allegations of conspiracy with regard to these offences. The applicant never impersonated herself as sister of co-accused and in fact she was not even present in the marriage of co-accused. The applicant is neither sister nor wife of co-accused, but was known to co-accused before his marriage. Although, the child is the child of the applicant and co-accused, but the applicant never married to co-accused. Offence u/s 495 IPC is a bailable one, whereas Section 376 IPC is not made out. The applicant is in custody since 17th August, 2013 along with her minor child who is aged about

2 years. As such, she be released on bail. Reliance was placed on Jagdish Nautiyal Vs. State, .

3. On the other hand, application is opposed by learned Additional Public Prosecutor for the State who referred to the status report wherein it was mentioned that the FIR was registered on the complaint of Megha wherein she alleged that in the year 2010 a matrimonial advertisement was given in newspaper for marriage. On this advertisement, accused Manish @ Mahender came to his house with one lady whom he introduced her as his sister for proposal of marriage. Accused introduced himself as unmarried and told her family members that he wants to marry Megha. The lady who accompanied the accused also confirmed that she was sister of the accused. After that, complainant got married with accused and they started living at Vasant Kunj with the parents of the complainant. In July, 2011 accused Manish stole Rs. 80,00,000/- and jewellery from her house. FIR No. 190/2011 was registered at Police Station Vasant Kunj. Manish @ Mahendra and his so called sister Vijeta @ Varsha were arrested. The stolen jewellery and cash were recovered from their house. During investigation it was revealed that Manish @ Mahendra and Vijeta @ Varsha were married to each other much before he married the complainant. They also had a girl child. Complainant also produced the birth certificate of the girl child Ishika, bank policy of Mahendra, property papers, press release and some photographs for showing that accused Manish @ Mahendra and Vijeta @ Varsha are husband and wife and they are having a girl child. It has been established during investigation that accused Manish @ Mahendra married complainant by concealing the facts that he was already married to accused Vijeta @ Varsha and that applicant was introduced as his sister. Accused Manish @ Mahendra is still absconding. Both the accused acted in conspiracy with each other to cheat the complainant and her family members.

4. During the course of arguments, it was submitted by counsel for the applicant that applicant did not marry Manish @ Mahendra and was living with him in live-in-relationship. However, a copy of the birth certificate placed on record of the child Ishika reveals that the name of her father has been mentioned as Manish @ Mahendra. Moreover, although the FIR was registered by the Investigating Officer of the case u/s 376/395 IPC, however, in the status report it is mentioned that FIR is u/s 376/495/120B IPC. In the complaint it was stated by the complainant that in pursuance to the matrimonial advertisement, accused Manish @ Mahendra had come to her house with Vijeta @ Varsha who represented herself to be the sister of the co-accused and thereafter the marriage was solemnized. Even when FIR No. 190/2011 was registered regarding commission of theft recovery was effected and both Manish @ Mahendra and Vijeta @ Varsha were arrested.

5. Jagdish Nautiyal (supra) was a case where bail was granted in the facts and circumstances peculiar to that case, however, the facts are entirely different as stated above in the present case. That being so, applicant cannot get any help

from the order passed in that bail application. In view of the seriousness of the allegations coupled with the fact that co-accused Manish is evading arrest, it is too early to release the accused on bail. As such, the application is dismissed.