

HIGH COURT OF DELHI**Bench: Hon'ble Mr. Justice Rajnish Bhatnagar****Date of Decision: 09 November 2023**

BAIL APPLN. 847/2023

KRISHAN GABA Petitioner**VS****STATE (NCT OF DELHI) & ANR.****.... Respondents****Sections, Acts, Rules, and Articles Mentioned:**

Section 438 of the Criminal Procedure Code (Cr.P.C) – Anticipatory Bail.

Sections 376 (Punishment for Rape), 377 (Unnatural offences), and 504 (Intentional insult with intent to provoke breach of the peace) of the Indian Penal Code (IPC).

Section 164 of the Criminal Procedure Code (Cr.P.C) – Recording of Statements and Confessions.

Subject of the Judgement: Application for anticipatory bail in relation to charges under Sections 376, 377, and 504 of the IPC for alleged rape, unnatural offences, and intentional insult.**Headnotes:**

Bail Application – Grant of Anticipatory Bail in Case FIR No. 260/2023 – Allegations of Rape and Threats under Sections 376/377/504 IPC – Petitioner's Relationship with Prosecutrix and Subsequent Incidents – Application for Anticipatory Bail Filed. [Para 1]

Facts of the Case – Allegations by Prosecutrix of Forceful Physical Relations, Threats with Nude Photographs, and Forced Abortion – Petitioner's Relationship with Married Prosecutrix and Subsequent Avoidance. [Para 2-3]

Defense by Petitioner – Claims of Prosecutrix Being Already Married with a Child, Withdrawal of Previous Complaint, and False Allegations – Submission of False Divorce Decree by Prosecutrix – Petitioner's Participation in Investigation. [Para 5-6]

Prosecution's Argument – Seriousness of Allegations, Pretense of Marriage for Sexual Acts, and Threats to Prosecutrix – Support of Prosecutrix's Version in Statement U/s 164 Cr.P.C. [Para 7]

Court's Observations – Consensual Nature of Relationship, False Divorce Decree, and Lack of Evidence for Video-graphed Sexual Acts – Complaint of Threats Unsubstantiated. [Para 8-9]

Decision – Grant of Anticipatory Bail to Petitioner with Conditions – Personal Bond of Rs. 25,000/- and Joining Investigation as Required – Observations Not Reflecting Opinion on Merits of the Case. [Para 10-11]

Referred Cases with Citations:

- Not mentioned in the provided judgment extract.

Representing Advocates:

- For Petitioner: Dr. Adish C. Aggarwala, Sr. Adv., Mr. Karan Ahuja, Mr. Rajat Bhatia, Mr. Amish Aggarwala, Mr. Kuldeep Hauhari, Mr. Anubhav Tyagi, Ms. Ekta Mudgil, Ms. Alka Nupur Singh, Mr. Vedansh Lohani, Mr. Hitanshu, Mr. Nilesh Kumar, Ms. Antra Mishra, and Mr. Nishant Sharma.
- For Respondents: Mr. Raghuvinder Verma, APP for the State, with SI Sumedha, PS Shalimar Bagh, Ms. Jyoti Singh, and Mr. Akshaya Kaushik for R-2.

CORAM:

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

ORDER RAJNISH

BHATNAGAR, J.

1. The present bail application has been filed by the petitioner under Section 438 Cr.P.C for grant of anticipatory bail in case FIR No. 260/2023 U/s 376/377/504 IPC registered at Police Station Shalimar Bagh.
2. Briefly stated, the facts of the case as per the allegations made by the prosecutrix are that the prosecutrix and the petitioner were known to each other for quite some time and they became good friends. As per the allegations, the petitioner took the prosecutrix into confidence saying that he would marry her. On 17.06.2021, petitioner took the prosecutrix to Arya Samaj Temple, Mori Gate, Delhi for marriage and thereafter they started living together. During this period, petitioner established forceful physical relations with the prosecutrix. Prosecutrix made efforts to persuade the petitioner to get the marriage registered but the petitioner kept on delaying the same.
3. It is further alleged by the prosecutrix that the petitioner with the help of his friend, took her nude photographs and threatened her to have physical relations with him and his friend or they would publicize her nude photographs. Thereafter the petitioner and his friend established physical relations with the prosecutrix under the threat of publicizing her nude photographs. The prosecutrix got pregnant but the petitioner forcibly gave her

abortion drugs. In the second month of the year 2023, the petitioner started avoiding the prosecutrix.

4. I have heard the Ld. Sr. counsel for the petitioner, Ld. APP for the State assisted by the Ld. counsel for the complainant, perused the Status Report and also perused the records of this case.

5. It is submitted by the Ld. Sr. counsel for the petitioner that during the initial stage of relationship, the complainant/prosecutrix had not informed the petitioner that she was already married and had a grown up child and this fact came to the knowledge of the petitioner only on 12.01.2021, when she had filed her first complaint against the petitioner at police Station Seemapuri. It is further submitted by the Ld. Sr. counsel for the petitioner that the said complaint was withdrawn by the complainant/prosecutrix on 13.01.2021 in the presence of her husband by giving the statement that since she had a fight with the petitioner, therefore, she filed the said complaint. It is further submitted that on 12.09.2021 the complainant/prosecutrix texted to the petitioner that she had made the allegations of rape on the asking of some friend. It is further submitted that since the complainant/prosecutrix is a married woman so there was no question of her marriage with the petitioner and the complainant/prosecutrix had shared her divorce decree dated 08.03.2021 in H.M.A. No. 708/2021 with the petitioner on WhatsApp and when the petitioner obtained the certified copy of H.M.A. No. 708/2021, the same was found to be of some other party and not of the complainant.

6. It is further submitted by the Ld. Sr. counsel for the petitioner that the petitioner has joined the investigation and his mobile phone has already been seized and deposited in the Malkhana.

7. On the other hand, Ld. APP for the state assisted by the Ld. counsel for the complainant has argued on the lines of the Status Report and has submitted that the complainant/prosecutrix has supported her version even in her statement U/s 164 Cr.P.C. Ld. counsel for the victim/complainant has submitted that the allegations are serious in nature and on the pretext of marriage the petitioner had raped the complainant/prosecutrix and subsequently co-accused who is the friend of the petitioner also raped the complainant/prosecutrix. It is further submitted by the Ld. counsel for the complainant that the complainant has been receiving threats from the petitioner and she had lodged a complaint with P.S. Shalimar Bagh.

8. In the instant case, the complainant/prosecutrix is a married lady with a grown up child which is not disputed. The relationship between the petitioner and the complainant/prosecutrix appears to be consensual in nature which is reflected from the text messages exchanged between the petitioner and the complainant. The complainant even produced a false decree of divorce and it is also to be noted that when the complainant was already married and having a child, there cannot be a question of her marriage with the petitioner.

9. The petitioner has already joined the investigation, his phone has been seized which is in the malkhana. According to the Status Report filed by the State, there is nothing on record to show that any sexual act was video-graphed as alleged. The complainant/prosecutrix has also made the allegations of threats as extended to her on 02.04.2023. The Status Report in that regard was also called and as per the Status Report the allegations levelled by the complainant in regard to the incident dated 02.04.2023 could not be substantiated therefore, her said complaint was filed.

10. Keeping in view the entire facts and circumstances of the case and also the fact that the petitioner has joined the investigation, nothing is to be recovered from him and in view of the observations made hereinabove, the application is allowed and it is ordered that in the event of arrest, the petitioner be released on bail on his furnishing a personal bond in the sum of Rs. 25,000/- with one surety of the like amount subject to the satisfaction of the IO/SHO concerned. However, the petitioner is directed to join the investigation as and when called by the IO. The bail application is disposed of accordingly.

11. Nothing stated hereinabove shall tantamount to the expression of any opinion on the merits of this case.

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