

HIGH COURT OF DELHI
Bench: Justice Rajnish Bhatnagar
Date of Decision: 20 December 2023

BAIL APPLN. 3853/2023

MEHRAN ANJUM MIR

..... Petitioner

versus

STATE GOVT.OF NCT OF DELHI

.... Respondent

Legislations:

Section 438 of the Criminal Procedure Code (Cr.P.C)
Section 376, 328 of the Indian Penal Code (IPC).
Article 21 of the Constitution of India

Subject:

Grant of anticipatory bail in a case involving allegations of sexual assault and the admissibility of electronic evidence such as WhatsApp chats and call recordings in the context of the right to privacy.

Headnotes:

Anticipatory Bail – Grant of Anticipatory Bail in Sexual Assault Case – Petitioner, accused of sexual assault under Sections 376/328 IPC, granted anticipatory bail – Allegations of non-consensual sexual intercourse and deceitful medication by petitioner – Complainant's delayed report and content of WhatsApp chats considered in decision – Bail granted subject to conditions, including non-indulgence in criminal activities, non-interference with witnesses or evidence, and compliance with investigation requirements. [Para 1, 2, 5, 6, 11, 19]

Relationship and Consent – Alleged consensual relationship between petitioner and complainant – Petitioner's claim of consensual sexual relations countered by complainant's allegations of rape under pretext of marriage – WhatsApp chats and delay in FIR registration discussed to assess nature of relationship and consent. [Para 9, 14, 16, 17]

Evidence Admissibility and Privacy Concerns – Questioning admissibility of WhatsApp chats and call recordings – Petitioner's challenge to the authenticity and legality of call recordings citing privacy rights under Article 21 of the Constitution – Evidentiary value of these communications to be determined during trial. [Para 9, 15, 18]

Decision – High Court grants anticipatory bail to petitioner considering the circumstances and evidence presented – Specific terms and conditions

imposed to ensure compliance with legal process and protection of victim and witnesses – Observations made without prejudice to the merits of the case. [Para 19, 20, 21]

Referred Cases:

- Sanjay Pandey Versus Directorate of Enforcement, 2022 LAWPACK (Del) 90331: 2023(1) AD (Delhi) 53
- Navdeep Singh @ Gaurav Vs. State of NCT of Delhi, 2021 LAWPACK (Del) 83208: 2021(279) DLT 706.

Representing Advocates:

For the Petitioner: Mr. Akshay Chandra, Mr. Shubhanshu Singh, and Mr. Suman Kumar.

For the Respondent: Mr. Amit Ahlawat, APP for the State.

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. 584/2023 U/s 376/ 328 IPC registered at Police Station Nabi Karim.
2. Briefly stated, the facts of the case are that a zero FIR No 004/2023 Dated 07.10.23, U/s 376 IPC P.S. Maghwadi, Mumbai, Maharashtra was received in PS Nabi Karim vide diary No. 2322 SO/DCP/C and the same was marked to SI Sharanya S for further action. On 23.10.23 the complainant came to police station and identified her English statement which is attached with ZERO FIR.
3. The complainant alleged in her statement that she is a worker of Congress Party from the year 2018. She further alleged that she met petitioner 5-6 years ago through facebook and they become good friend. On 22.09.23, there was a proposer election of Delhi University union. So, for the preparation of the election, she came to Delhi on 30-07-2023.
4. The complainant further alleged that on 02.08.23, petitioner called her and asked her to meet him. On 03.08.23 and 5.08.23, she met petitioner and they took dinner together. On 05.08.23, petitioner proposed her for marriage and she accepted his proposal as she was in love with petitioner. She further alleged that she returned Mumbai on 09.08.23 for attending her cousin marriage. On 14.08.23, she again came to Delhi for university election and this time she stayed at Noida at petitioner's elder brother house. The

complainant further alleged that petitioner tried to establish physical relation with her but he could not do that.

5. The complainant further alleged that on 23.09.2023 between 1 to 2 p.m., she went to meet petitioner at Indo-Continental hotel, 8490/91, Aryan Nagar, near Dharmakanta, Arakshan Road, Pahadganj, New Delhi. When they were together, petitioner gave her medicine of fever and juice to drink. After that she felt asleep. In the evening, around 5 to 6 p.m. when she woke up there was a blanket on her body and her clothes were missing and she realized that her friend (petitioner herein) had a sexual intercourse with her without her consent. She asked the explanation to petitioner but he said that they will marry. Petitioner told her that he would come to Mumbai and talk about their marriage with her parents. On 25.09.2023, she returned to Mumbai.

6. The complainant further alleged that after returning to Mumbai, petitioner and she were talking on mobile phone. When she asked petitioner about marriage, petitioner refused to marry with her. She further alleged that on 2.10.2023, petitioner disconnected her and blocked her on social media.

7. During the course of legal action NGO counsellor was informed and medical examination of complainant was got conducted from RML Hospital vide MLC No-E/216339/23 and a case FIR No 584/23, U/s 376 IPC was registered on 23.10.23 and investigation went underway.

8. I have heard the Ld. counsel for the petitioner, Ld. APP for the State, perused the Status Report and also perused the records of this case.

9. It is submitted by the Ld. counsel for the petitioner that the allegations against the petitioner are baseless and the relationship between the petitioner and the victim was consensual and the victim had accompanied the petitioner throughout of her own free will and she had even stayed at the house of the brother of the petitioner. It is further submitted that the alleged call recordings between the petitioner and his wife are neither authenticated nor the contents were made known to the petitioner. It is further submitted by relying on ***Sanjay Pandey Versus Directorate of Enforcement 2022 LAWPACK (Del) 90331 : 2023(1) AD (Delhi) 53*** that the recording calls without consent is a breach of privacy and right to privacy has been enshrined under Article 21 of the Constitution which demands that the phone calls not be recorded except with the consent of the individuals concerned. So, therefore, it is argued that no reliance can be placed on that call records.

10. It is further submitted by the Ld. counsel for the petitioner that as per the FIR the petitioner tried to establish physical relations with the victim but he could not do that. It is further submitted that when such are the allegations then there was no occasion for the victim to have accompanied the petitioner to Indo-Continental Hotel on 23.09.2023, when it is alleged that the petitioner gave something to the victim to drink because of which she fell asleep and was allegedly raped.

11. It is further submitted by the Ld. counsel for the petitioner that it is evident from the WhatsApp chats between the petitioner and the victim that the victim has threatened the petitioner that in case he fails to call her, she would straightaway file a rape case and would get herself medically examined at the police station. It is further submitted that there is a delay of more than 30 days in registering the FIR which clearly shows that the petitioner has been falsely implicated as the petitioner stopped talking with the victim.

12. It is further submitted that there is not even an iota of evidence in order to attract Section 328 IPC. It is further submitted that the petitioner has clean past antecedents and no recovery is to be effected from him. Ld. counsel for the petitioner has relied upon ***Navdeep Singh @ Gaurav Vs. State of NCT of Delhi 2021 LAWPACK (Del) 83208 : 2021(279) DLT 706.***

13. On the other hand, Ld. APP for the State while opposing the bail application has argued on the lines of the Status Report. It is submitted by the Ld. APP that on 06.11.2023, the victim had come to the police station and produced 23 pages of screen shots of WhatsApp chats in order to prove the allegations in her complaint. It is further submitted by the Ld. APP that the victim has also stated that she is in possession of the call records of the petitioner in which he is admitting that he had sex with the victim. It is further submitted that the allegations are grave and serious in nature and on the pretext of marriage, the petitioner has committed rape. It is further submitted by the Ld. APP that as per the hotel booking, the petitioner and the victim had stayed in the hotel on 19.09.2023 and 23.09.2023.

14. In the present case, there is no denial from the side of the petitioner that the petitioner and the victim had sexual relationship but according to the petitioner the sexual relationship was consensual and only out of vengeance, the FIR has been registered as the petitioner had stopped talking with the victim. In order to substantiate this contention, the petitioner has placed on

record the WhatsApp chats between the petitioner and the victim and has specifically laid stress on the WhatsApp messages between them of 02.10.2023 and the perusal of the messages shows that the victim had sent message to the petitioner that in case he fails to call her by 12:00 noon on the next day, she would file a rape case and would also get her medical done in the police station. From the side of the victim numerous WhatsApp chats have been placed on record which took place between parties.

15. During the course of the arguments, on queries from the Ld. APP in regard to the authentication of the WhatsApp chats and also whether the mobile phone of the victim has been seized or not, it was submitted by the Ld. APP that the mobile phone of the victim has not been seized by the IO, so, therefore, in these circumstances the authentication of the WhatsApp chats is not there and also from the tone and tenor of the WhatsApp chats placed on record by both the parties shows that they were in relationship which had gone sour and what is the effect of these WhatsApp chats and whether they can stand the test of admissibility would be seen during the course of trial.

16. As per the FIR, apart from the alleged incident of rape, the petitioner according to the victim has even tried to get close to her on the pretext of marriage at the house of his brother but subsequently, the victim had accompanied the petitioner to a hotel and stayed there on two occasions and according to her she was raped by the petitioner in the hotel by giving her some medicines as a result of which she fell asleep and on getting up she noticed that she has been raped.

17. There is nothing on record to substantiate the allegations of the victim U/s 328 IPC and also when the petitioner had tried to make relations with the victim in the house of his brother, the victim could have gauged the intention of the petitioner as she is a grown up lady and despite that she accompanied the petitioner twice to hotel room.

18. As far as the call recordings are concerned, the arguments advanced by the Ld. counsel for the petitioner by relying upon the judgment **Sanjay Pandey Vs. Directorate of Enforcement** (*supra*) has force in it and what evidentiary value is to be given to these call recordings is a matter of trial and it is to be noticed that during the course of the arguments, it has been stated by the Ld. APP on instructions from the IO that the mobile phone of the victim

has not been seized so again there is a question mark on the admissibility of these call recordings which again is a matter of trial.

19. In view of the discussions mentioned hereinabove and keeping in view the facts and circumstances of this case and also the fact that nothing is to be recovered from the petitioner, the bail 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. 50,000/- with one surety of the like amount subject to the satisfaction of the IO/SHO concerned on the following terms and conditions:

- (i) The petitioner shall not indulge in any criminal activity during the bail period;
 - (ii) The petitioner shall not communicate with, or come into contact with any of the prosecution witnesses, or any member of the victim's family, or tamper with the evidence of the case;
 - (iii) The petitioner shall join the investigation as and when called by the IO.
20. The application stands disposed of in the aforesaid terms.
21. Nothing stated hereinabove shall tantamount to the expression of any opinion on the merits of the case.

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