

* IN THE HIGH COURT OF DELHI AT NEW DELHI
Judgment delivered on: July 19th, 2016
+ BAIL APPLN. 1106/2015

KHUSHWANT SINGH Petitioner
Through Mr.Joginder Tuli, Ms.Babita Rana,
Mr.Joshini Tuli, A.K. Sharma, &
Ms.Pooja Arora, Advocates.

versus

STATE (NCT OF DELHI) Respondent
Through Mr. Amit Chadha, Additional Public
Prosecutor for the State

CORAM:
HON'BLE MR. JUSTICE P.S.TEJI
JUDGMENT

P.S.TEJI, J.

1. By this petition filed under Section 438 of Cr. P.C., the petitioner seeks anticipatory bail in FIR No.707/2015, under Section 376/506 IPC, Police Station Hari Nagar, Delhi.

2. The prosecution case is based upon the statement of the complainant – Rekha, according to which she met accused / applicant at a party in a club where he took her phone number. On the very next day, the applicant made a call to her and told her that he has many hotels and he can get her a job. Thereafter, on 07.05.2015 he called her to Amritsar with her husband for a job. As per the complainant, she met the accused at Sherawala Chowk at Amritsar from where he took her to an abandoned place in his car and told her that he will get

her a job provided if she agrees to have sex with him, to which she agreed. It is further alleged that after returning to Delhi the applicant made many calls to the complainant to which she did not respond, but on 13.05.2015, after repeated calls, she picked the phone, and the applicant called her near Tilak Nagar Gol Chakkar at about 9.30 PM, from where he made her to sit in his car and after travelling for some distance he bought a Pepsi from a shop and made her drink it and after drinking she felt giddy. It is further alleged that she was taken to Hari Nagar near Jheelwala Park where he parked his car at a deserted place and threatened her of throwing acid on her face and taking out his pistol in case she screams or shouts, due to which the complainant got scared. Thereafter, it is alleged that she was forcibly raped by the applicant. She called her husband at the spot and after knowing about the incident, he called at 100 number. Police reached the spot and took the victim to DDU hospital for medical test. SI Sateywati recorded her statement. The victim was medically examined by the doctor, samples taken were sent to FSL, report of which is awaited. Thereafter, statement of the complainant under Section 164 of Cr. P.C. was recorded by the learned Metropolitan Magistrate, Tis Hazari, in which the complainant supported the contents of the FIR.

3. Investigation was commenced and efforts were made to arrest the applicant but he deliberately and intentionally absconded. On 23.05.2015, the applicant moved an application before the Session Court for seeking anticipatory bail, which was dismissed on 23.05.2015. Thereafter, the applicant approached this Court and vide

order dated 01.06.2015, this Court ordered not to take any coercive steps against the petitioner, subject to petitioner joining the investigation as and when directed by the Investigating Officer.

4. As per prosecution, the petitioner has joined the investigation and during interrogation, he has admitted the fact of visiting Amritsar on 07.05.2015 but with some other known persons. He also denied the fact of calling the complainant and meeting her. The other persons, as stated by the petitioner have also been examined, who told that the applicant went somewhere on reaching Amritsar with his friend Harpreet Singh and came back on the next day when they came back to Delhi.

5. Mr. Joginder Tuli, learned counsel for the petitioner contended that the petitioner is falsely implicated in the present case as the complainant alleged that in Amritsar, she accepted the proposal of the applicant about having sex with him, then it is highly improbable that the applicant after having had the consent of the complainant would have had to rape her using the so called threats as have been attributed to him by the complainant and that too in a car at a spot near Jheelwala Park, Hari Nagar.

6. It is further contended on behalf of the petitioner that the petitioner is a married person and has a son of about 15 months, he lives in a joint family with his parents and has roots in the society and there are no chances of his absconding or tampering with the prosecution evidence. It is further contended that the applicant has a

good reputation in the society and his arrest may disrepute him in the eyes of his relatives, friends and acquaintances. Moreover, the petitioner has joined the investigation in compliance of the order of this Court and is also cooperating in the investigation, therefore, the applicant ought to be granted bail in the present case.

7. Mr. Amit Chadha, Additional Public Prosecutor for the State vehemently opposed the aforesaid contentions made on behalf of the petitioner and submitted that though the petitioner has joined the investigation but the analysis of the applicant's CDR, on the day of incident, i.e., 13.05.2015, in Delhi, show that two calls were made from the applicant's phone to the complainant's phone at about 8.47 PM and 10.07 PM but during these calls the location of the phone of accused as well as the complainant's phone is not found at Tilak Nagar as she claimed that she was picked by the applicant from Tilak Nagar Gol Chakkar at about 9.30 PM, but between 8.47 PM to 9.23 PM the location of the applicant phone is found at Virendra Nagar, Janakpuri B-1 Block, Rajouri Garden and after 9.23 PM to 11.59 PM, at Subhash Nagar 2 Block, as disclosed in FIR at the time of incident by the complainant. As per CDR analysis of the phone of the complainant, the location of her phone between 8.47 to 10.07 PM on 13.05.2015 is showing as Janak Puri C-Block, MTNL Office, DDU Hospital and last Beri Wala Bagh, Subhash Nagar, which shows the possibility of the offence.

8. Learned Additional Public Prosecutor for the State further contended that the complainant has supported her complaint in her

statement under Section 164 of Cr. P.C. recorded before the learned Metropolitan Magistrate, Tis Hazari Court, therefore, in such a situation, the applicant ought not be granted bail in the present case.

9. I have given my thoughtful and serious consideration to the aforesaid submissions of the counsel for both the sides, particularly, keeping in mind that there is a specific allegation of rape against the petitioner and the case projected by the prosecutrix is that as she has been immensely harassed, physically abused and mentally tortured by the petitioner.

10. In the first place, it is necessary to observe that in the present proceedings, this Court is concerned not about the feasibility of allegation of the offence punishable under Section 376 Indian Penal Code or merit thereof but to the grant of anticipatory bail to the petitioner. Therefore, the submissions on behalf of the petitioner attempting to find the loopholes and the weakness in the prosecution case, would not be of much relevance to the issue involved in the present case. In the considered opinion of this Court, at this stage, it cannot be said as to whether there was any physical relationship between the petitioner and the complainant and, if so, whether it was consensual. The fact remains that there are specific allegations of rape against the petitioner. It would ultimately be for the trial court to arrive at the findings as to whether such an allegation stands proved or not, on the basis of evidence that would be produced by the prosecution in support of its case. With these preliminary remarks, I advert to the core issue, namely, whether in the circumstances of this

case, petitioner is entitled to anticipatory bail or not and whether the learned Additional Sessions Judge was justified in rejecting the anticipatory bail to the petitioner.

11. For granting anticipatory bail to the person against whom the allegations of rape has been leveled, the factors that need to be taken into consideration while dealing with anticipatory bail, are; (a) The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made; (b) The possibility of the applicant to flee from justice; (c) The possibility of the accused's likelihood to repeat similar or other offences; (d) Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people; (e) while considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors, namely, no prejudice should be caused to free, fair and full investigation, and there should be prevention of harassment, humiliation and unjustified detention of the accused; (f) The Court should consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant and unless there are peculiar and special facts and circumstances in a given case, the Court would not be justified in extending the benefit of anticipatory bail to such a person.

12. In view of the aforesaid settled principles and considering the facts and circumstances of the present case and the fact that the trial is at the initial stage, and the status report filed by the State indicating that, “while analyzing the CDRs of the complainant as well as the

petitioner regarding the date and time of the incident specifically mentions that the location of both phones on 13.05.2015 is in between 3 Km, and the mobile phone companies are also different, which shows the possibility of the offence”, in the considered opinion of this Court, while perusing the allegations leveled against the petitioner, and considering the gravity of offence and the nature, this Court is not inclined to grant anticipatory bail to the petitioner in this case.

13. Resultantly, in the considered opinion of this Court, the facts emerging from the record culminates into dismissal of the present bail application. Accordingly, the present bail application filed by the petitioner is dismissed.

14. Before parting with the order, this Court would like to place it on record by way of abundant caution that whatever has been stated hereinabove in this order has been so said only for the purpose of disposing of the prayer for anticipatory bail made by the petitioner. Nothing contained in this order shall be construed as expression of a final opinion on any of the issues of fact or law arising for decision in the case which shall naturally have to be done by the Trial Court seized of the trial.

15. With aforesaid direction, the present bail application, filed by the petitioner stand disposed of.

(P.S.TEJI)
JUDGE

JULY 19, 2016
pkb