

## Mohd Nazim vs State & Anr on 19 September, 2022

**Author:** Swarana Kanta Sharma

**Bench:** Swarana Kanta Sharma

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\* IN THE HIGH COURT OF DELHI AT NEW DELHI  
+ BAIL APPLN. 2653/2022  
MOHD NAZIM  
Through: Mr. Alok, Mr. Siddharth  
Ms. Aanchal, Mr. Rohit  
Ms. Shruti Walia, Advoc  
versus  
STATE & ANR.  
Through: Mr. Ritesh Kr. Bahri, A  
Mr. Abhishek Jha, Advoc  
(8)  
+ BAIL APPLN. 2660/2022  
SHAKIR HUSAIN ..... Petit  
Through: Mr. Alok, Mr. Siddharth Narang,  
Ms. Aanchal, Mr. Rohit Kumar and  
Ms. Shruti Walia, Advocates  
versus  
STATE & ANR. ...  
Through: Mr. Ritesh Kr. Bahri, A  
CORAM:  
HON'BLE MS. JUSTICE SWARANA KANTA SHARMA  
ORDER

% 19.09.2022

1. The instant bail applications have been moved on behalf of the petitioners namely Md. Nazim and Md. Shakir Husain who are the husband and father-in-law of the complainant respectively seeking anticipatory bail in FIR No. 629/2022 registered at Police Station Aman Vihar for the offence under Sections 376/506 IPC.

2. Brief facts of the case are that petitioner no. 1 and the complainant got married on 19.09.2020. After 2-3 months of marriage, complainant's brother-in-law started molesting and touching her inappropriately. One day when she was alone at home, her brother-in-law raped her and even threatened to kill her in case she disclosed the same to anyone. Thereafter, he had raped her many times. Complainant had disclosed the said incidents to her husband, father-in-law and mother-in-law who had rather blamed her for that incident and had pressurized her for divorce.

3. Pursuant to this, FIR bearing no. 629/2022 dated 14.07.2020 under Sections 376/506 IPC at Police Station Aman Vihar, Delhi was registered. Thereafter, statement under Section 161 CrPC was recorded whereby only the brother-in-law was alleged to have committed the offence of rape.

4. During the course of investigation, complainant's statement under Section 164 Cr.P.C. was recorded on 18.07.2022 wherein she corroborated the facts mentioned by her in her complaint and also stated that petitioner no. 2, who is her father-in-law, had also committed rape on her. She had also leveled allegations of sexual abuse against her husband, father-in-law and brother-in-law committing sexual assault on her. She had also alleged that her mother-in-law and sister-in-law had torn her clothes and had made videos of the sexual assault. Pursuant to recording of statement under Section 164 Cr.P.C., sections 376D/377/354/498/34 IPC were added in this case.

5. Learned APP for the State submits that on 14.07.2022, the brother-in-law of the complainant was arrested and is in custody since then. All other accused persons i.e., mother-in-law and sister-in-law have been granted bail who have joined investigation. It is alleged that the video made by the mother-in-law and sister-in-law could cause harm to the complainant in future.

6. Learned APP has also stated that the allegations are serious and grave in nature and custodial interrogation is required for recovering the video clips. Therefore, anticipatory bail be not granted.

7. Learned counsel for the petitioners, on the other hand, stated that the petitioners have been falsely implicated in this and that they have not committed any offence, and pursuant to being granted interim protection by this Court they have joined investigation. The learned counsel stated that there is improvement made by the complainant while recording her statement under Section 164 Cr.P.C. as she has added allegations of sexual assault against the father-in-law, only with a view to pressurize the petitioners to extort money from them.

8. I have heard learned counsels for both the parties. After hearing arguments, this Court is of the opinion that as per status report filed by the State all the accused persons have joined investigation and have handed over their mobile phones to the Investigating Officer (IO). However, no video of the complainant could be found on any of the mobile phones. The mobile phones so seized have been sent to FSL to obtain/retrieve the data including the deleted data if any and the result thereof is awaited.

9. A perusal of the record shows that FIR in this case was registered on 14.07.2022 and the statement under Section 164 Cr.P.C. was recorded on 18.07.2022, however, the dispute between the parties had arisen prior to that and a complaint in this regard had been lodged at Bijnor, Uttar Pradesh on 07.07.2022. The complainant filed the said complaint at Tajpur Khana Police Station Noorpur, wherein she had made allegations of harassment and physical violence against the husband and the brother-in-law.

10. The complaint lodged on 14.07.2022 on the basis of which an FIR was registered did not find mention of allegations of rape against the father-

in-law. The said FIR was registered against the brother-in-law of the complainant, petitioner no. 1 and her husband Md. Nazim under Section 376 IPC.

11. Even a perusal of the FIR reveals that there are no allegations against the petitioners in the FIR. In the original FIR, since allegations were made against brother-in-law and husband, brother-in-law has already been arrested and is in judicial custody. The allegations of rape, thus, were for the first time leveled against the petitioner/father-in-law when statement under Section 164 Cr.P.C. was recorded. However, it will be ascertained only during trial as to whether these allegations were afterthought and were added by the complainant to improve her case or were actually correct.

12. Charge-sheet has already been filed in the present case against the rest of the accused persons.

13. The result of the FSL is still awaited as to whether any video of the complainant was deleted which will also be clear only during trial. The IO states that the petitioners have complied with all the terms and conditions imposed by this Court while granting interim protection to them vide order dated 05.09.2022.

14. The petitioner/Mohd. Nazim who is husband in BAIL APPLN. 2653/2022 has not made out a case for grant of anticipatory bail, in light of the serious nature of the allegations levelled against him by the complainant in complaint at Bijnor, statement under Section 161 Cr.P.C & Section 164 Cr.P.C. There are consistent allegations against the husband/petitioner of serious nature towards the complainant. Therefore, considering the overall facts and circumstances, this Court does not deem fit to grant anticipatory bail to Mohd. Nazim as NBW have also been issued against him.

15. This Court is of the view that the allegations against the petitioner/Shakir Husain in BAIL APPLN. 2660/2022 were first time levelled only by way of the statement under Section 164 CrPC. He is father- in-law of the complainant.

16. Keeping in view all the facts and circumstances mentioned hereinabove, this Court is inclined to grant anticipatory bail to the petitioner/ Shakir Husain in BAIL APPLN. 2660/2022 on his furnishing personal bond in the sum of Rs. 20,000/- with one surety of the like amount to the satisfaction of the SHO/I.O concerned on the following terms and conditions:

i) The applicant shall remain available on mobile numbers; shared by him with the Police.

ii) The applicant shall not leave NCT of Delhi without prior permission of the concerned IO/SO.

iii) The applicant shall not directly or indirectly make an attempt to influence the witnesses or tamper with the evidence in any manner.

iv) In case of change of residential address/contact details, the applicant shall promptly inform the same to the concerned I.O/SO.

17. In view thereof, the present application stands dismissed. It is however clarified that observations made by this Court shall have no bearing on the merits of the case during the trial.

SWARANA KANTA SHARMA, J SEPTEMBER 19, 2022/zp