

Sushant Kaushik vs State on 31 October, 2023

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ BAIL APPLN. 3175/2023 & CRL.M.A. 25642/2023

SUSHANT KAUSHIK

Through:

STATE

Throu

CORAM:

HON'BLE MR. JUSTICE SAURABH BANERJEE
ORDER

% 31.10.2023

1. The applicant vide the present application under Section 438 of the Code of Criminal Procedure, 1973 [CrPC] is seeking anticipatory bail in FIR No.180/2023 dated 19.07.2023 registered under Sections 313/323/376/377/506/509/201/120B of the Indian Penal Code, 1860 [IPC] at PS.: Sector 23 Dwarka, Delhi.

2. As per FIR, the prosecutrix met the applicant in February, 2022 in This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 03/11/2023 at 23:02:00 the College where the applicant was a 'Student', wherein the prosecutrix was/ is a 'Professor'. The prosecutrix alleges that in May, 2022, while she was on an official trip to Manali, they got married in a small temple and the applicant promised to legally marry her in future.

3. She further alleges that she also met the family members of the applicant on 04.06.2022 at his home who had no objection to their marriage. Later, on 04.02.2023, the applicant disappeared and it was only on 07.02.2023 that the applicant contacted the prosecutrix and informed her that he was

being kept captive in his maternal-aunt's home.

4. Further, as per FIR, after coming to know about the pregnancy of the prosecutrix in April, 2023, the applicant and his family forced her to abort the child, in furtherance of which, a pill was administered to her by the applicant. Thereafter, in June, 2023, the prosecutrix came to know about her being pregnant again. On sharing the same with the applicant, he was very happy. Later, on 01.07.2023, the applicant took an advance of Rs.2,50,000/- from the prosecutrix and left. On 02.07.2023, the applicant booked an appointment of the prosecutrix with a Gynecologist in Gurgaon for 04.07.2023. Lastly, as per FIR, the prosecutrix last contacted the applicant on 04.07.2023 at 08:00 AM.

5. The learned senior counsel for the applicant submits that the applicant does not seek to harm/threaten the prosecutrix. On the contrary, he submits that the prosecutrix has at multiple instances portrayed her intentions to intimidate the applicant and his family. He further submits that the present FIR is filed with the sole intention of harassing the applicant who is a 20 year old Student in the College, where the prosecutrix was a Professor.

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6. The learned senior counsel further submits that the applicant has participated in the investigation at multiple instances between 31.07.2023 and 12.09.2023. He further submits that on 14.09.2023, after dismissal of the anticipatory bail application, a notice under Section 41A, CrPC was immediately issued by the IO to the applicant requiring his presence. Albeit, on 06.10.2023, proceedings under Section 82 were initiated, the applicant has not been declared as Proclaimed Offender [PO]. Placing reliance on Sarla Devi vs. State of NCT of Delhi (2015) SCC OnLine Del 9933, he submits that initiation of Section 82 proceeding does not have any bearing on the present application seeking anticipatory bail, as the applicant is yet to be declared a PO. The learned senior counsel further submits that the present is a fit case for grant of anticipatory bail as the applicant has clean antecedents, is not a flight risk and shall not tamper evidence or influence witnesses.

7. Notice was issued and the Status Report was called for.

8. Learned APP appearing for the State has opposed the present application of the applicant in light of the heinousness of the offences alleged and the sentence in case of conviction. She submits that initiation of Section 82, CrPC proceedings qua the applicant causes serious impediment to the present application. She further submits that the Id. Trial Court dismissed the anticipatory bail application of the applicant noting the fact that he had threatened the prosecutrix in the Police Station. Relying on P. Chidambaram vs. Directorate of Enforcement (2020) 13 SCC 791, the learned APP submits that grant of anticipatory bail would lead to the applicant influencing the prosecutrix and tampering the evidence.

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9. This Court has heard the learned senior counsel for the applicant and the learned APP and perused the documents on record including the Status Report filed on behalf of the State alongwith the judgment therewith.

10. While considering a case like the present one, involving offences under Section 376 of the IPC, though this Court has to be cognizant of the heinousness, gravity and severity of punishment involved thereof, it has to also take due note and give sufficient weightage to not only the facts and circumstances involved therein but also the factual matrix including the antecedents and background involved as well as the whereabouts thereof.

11. In any event, this Court cannot be oblivious of the fact that the prosecutrix herein, admittedly, being a fully grown up matured adult lady aged around 35 years, who at the time of coming in contact (and entering into a relationship) with the applicant herein, was a young boy aged less than around 20 years. It is also not in dispute that the prosecutrix was already married to her ex-husband, however was undergoing divorce.

12. This Court also cannot lose sight of the fact that as the prosecutrix herein is, admittedly, holding a Ph.D. in Marketing, she is certainly highly educationally qualified and on this strength, gainfully employed as a Professor in a reputed University in Gurgaon, whereas the applicant herein was/ is merely a 'Student' studying in the same University. Thus, the prosecutrix was, admittedly, having a 'guru-shishya' relation with the applicant.

13. Coming to the facts involved herein, it would not be wrong for this Court to conclude at this stage that the prosecutrix was/ is someone who This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 03/11/2023 at 23:02:01 is having more than average intelligence and who was/ is well aware of the rights of a married woman and that the applicant had not reached marital age yet. It would also not be wrong for this Court to infer that she was/ is well aware of the repercussions of entering into a relation with such an underage individual 'Student'. De hors all the above, the prosecutrix on her own, chose not only to enter into a relationship with the applicant but also continue with the same for more than a year.

14. The fact of the matter is that, admittedly, since and from coming into contact in February, 2022 with the applicant till the filing of the complaint, just prior to registration of the present FIR, the prosecutrix had never made any complaint of any kind against him. It is also admitted that on 04.07.2023, the prosecutrix herself went and lodged a missing report before the very same Police Station qua the applicant. It is also her case that in the intergennum she not only met and was in contact with the parents of the applicant but was/ is aware as to where his sister was studying and

where his relatives were/ are residing. Not only that, it is her own case that she had 'transferred' Rs.2,50,000/- to the account of the applicant.

15. All the aforesaid show the love, care and affection, the prosecutrix had for the applicant. The fact that she entered into marriage with the applicant in a small temple in Shimla, which though being a matter of trial, is a living proof of the same. Prima facie, it seems that she was in a relationship with the applicant out of choice and desire rather out of compulsion or force. More so, whence she out of her own sweet will voluntarily chose to proceed with the applicant with open eyes, open ears and an open mind.

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16. It is a matter of fact that the present FIR has been registered on 19.07.2023 whereas the prosecutrix admittedly came in contact with the applicant in February, 2022 and continued her relationship with him all throughout for more than a year till the registration thereof. There is no plausible explanation given for the delay in registration of the present FIR.

17. The prosecutrix does not have any threat perception from the applicant as she has herself visited the College of the sister of the applicant and the residence of his relatives alongwith the Investigation Officer after registration of the present FIR. Though, it is stated that the applicant extended her threats in the Police Station after registration of the FIR, however, the prosecutrix has not lodged any complaint qua that. However, it is not in dispute that the applicant, on being granted interim bail by the learned Trial Court, not only joined and participated in the investigation on as many as fourteen occasions and has also handed over his mobile phone to the IO.

18. The applicant is a young student aged around 20 years with clear antecedents having no previous history of being involved in any other offences or having any other FIR registered against him.

19. Though an issue qua an Instagram post put up by one Ms. Deepika Narayan Bharadwaj at the behest of the applicant was raised by the learned APP for the State, however, at this stage, the same is too far- fetched as it requires due adjudication and trial. In any event, the same is not relevant for consideration at this stage, while this Court is considering grant of anticipatory bail to the applicant.

20. Lastly, it is relevant to mention that though the proceedings under This is a digitally signed order.

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Section 82 CrPC have been initiated against the applicant, however, the same is under challenge as the applicant has already filed a criminal revision petition which is pending before the learned Trial

Court. As on date, the applicant is only a 'Proclaimed Person' under Section 82(1) CrPC, who has been evading arrest but is yet to be declared a 'Proclaimed Offender' under Section 82(4) CrPC. Had the applicant already been declared as a PO, the present application seeking anticipatory bail by him before this Court would not have been maintainable. The position being not so, there is no bar for the applicant in filing the present application and the same is maintainable in the eyes of law. Moreover, the filing of the revision petition before the learned Trial Court is also not a bar to filing of the same petition before this Court.

21. Upon a due and meticulous deliberation of the overall facts and circumstances entailed hereinabove, this Court is of the opinion that the applicant has been able to satisfy the parameters for grant of anticipatory bail and prima facie made out a good case thereof. Even otherwise, this Court is not required to critically analyze the evidence on record at the stage of considering grant of anticipatory bail to the applicant.

22. Accordingly, the applicant is granted anticipatory bail in FIR No.180/2023 dated 19.07.2023 registered under Sections 313/323/376/ 377/506/509/201/120B of the IPC at PS.: Sector 23 Dwarka, Delhi. In the event of his arrest, the applicant be released, after furnishing a personal bond in the sum of Rs.1,00,000/- (Rupees One Lakh Only) alongwith one surety of the like amount by a family member/friend having no criminal case pending against them, subject to the satisfaction of the learned Trial This is a digitally signed order.

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- i. Applicant shall not leave the National Capital Territory of Delhi without prior permission of this Court and shall ordinarily reside at the address as per the Trial Court records. If he so wishes to change his residential address, he shall immediately intimate about the same to the I.O. by way of an affidavit.
- ii. Applicant shall surrender his Passport to the I.O., within three days. If he does not possess the same, he shall file an affidavit before the I.O. to that effect within the stipulated time. iii. Applicant shall appear before the Court as and when the matter is taken up for hearing.
- iv. Applicant shall join investigation as and when called by the I.O. concerned. He shall not obstruct or hamper with the police investigation and shall not play mischief with the evidence collected or yet to be collected by the Police. v. Applicant shall provide all his mobile numbers to the I.O. concerned which shall be kept in working condition at all times and shall not switch off or change the mobile number without prior intimation to the I.O. concerned. The mobile location be kept on at all times.
- vi. Applicant shall report to the I.O. at P.S. Sector 23 Dwarka, Delhi once every month in the first week of the month unless leave of every such absence is obtained from the

learned Trial Court. vii. Applicant shall not indulge in any criminal activity and shall not communicate with or come in contact with any of the This is a digitally signed order.

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23. Accordingly, the present application is allowed and disposed of in the aforesaid terms.

24. Copy of this order be sent to the concerned S.H.O. for necessary information and compliance thereof.

25. Needless to say, the observation made, if any, on the merits of the matter are purely for the purposes of adjudicating the present application and shall not be construed as expressions on the merits of the matter.

SAURABH BANERJEE, J.

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