

## Prabha Kaushik vs State on 1 December, 2023

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IN THE HIGH COURT OF DELHI AT NEW DELHI  
BAIL APPLN. 3970/2023, CRL.M.A. 32168-32169  
PRABHA KAUSHIK

Through:

versus

STATE

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CORAM:

HON'BLE MR. JUSTICE SAURABH BANERJEE

ORDER

% 01.12.2023

1. The present bail application has been filed by the applicant under Section 438 Cr.P.C 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 the FIR, the complainant had met the son of the applicant herein sometime in February, 2022 in the College where the applicant's son was studying and the complainant was a Professor. It is alleged that the son of the applicant and the complainant got married in May, 2022 in a small temple and when she met the applicant, she was acceptable of their relationship and marriage. However, in February, 2023, the applicant along with her husband did not let the complainant meet their son and 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 05/12/2023 at 23:15:00 when they came to know that the complainant was pregnant, they forced the complainant to abort the child. Further, the applicant, alongwith her husband, continued to threaten the complainant and did not let her meet their son.

3. Learned counsel for the applicant submits that she has been falsely implicated in the present dispute and that she had no role to play in the commission of the alleged offence. Learned counsel for the applicant further submits that according to the FIR also, no specific allegations have been made against the applicant herein. He further submits that allegations have been primarily made against her husband and her son, who have both been granted anticipatory bail in the present matter. He thus submits, that even on the ground of parity, considering that the main accused has

been granted bail, the applicant herein be also granted bail, as there is nothing on record to implicate the applicant.

4. Learned counsel for the applicant further submits that the applicant has already joined and participated in the investigations on four different occasions i.e., on 20.07.2023, 01.08.2023, 11.08.2023, and lastly on 24.08.2023. It is further submitted that Section 41A notice was issued on 23.09.2023, requiring her presence on 24.09.2023, and immediately NBWs were issued on 25.09.2023 and proceedings under Section 82 Cr.P.C. were initiated against the applicant. Relying upon *Sarla Devi vs. State of NCT of Delhi* (2015) SCC OnLine Del 9933, learned counsel for the applicant 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. Learned counsel for the applicant lastly submits that considering that the applicant herein in an aged lady This is a digitally signed order.

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

6. Learned APP for the State, relying upon the Status Report, opposes grant of anticipatory bail to the applicant on the ground that considering the nature and heinousness of the offences alleged, and the sentence in case of conviction, no case is made out in favour of the applicant. He further submits that the applicant has not participated in the investigation and proceedings under Section 82 Cr.P.C. He submits that the applicant has been actively involved in the commission of the alleged offence and that specific role has been assigned to her. He lastly submits that since the investigation in the present case is still going on, the applicant be not released on bail as her custodial interrogation is required to establish the links in the commission of the offence and that if released on bail, there is every possibility that the applicant may influence the witnesses and tamper with the evidence.

7. This Court has heard the learned counsel for the applicant and the learned APP and perused the documents on record including the Status Report.

8. 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, This is a digitally signed order.

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9. It is to be noted that though the proceedings under Section 82 CrPC have been initiated against the applicant, however, 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 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.

10. A perusal of the FIR reveals that neither any specific role has been assigned to the applicant herein, nor any specific allegations have been made against. These, coupled with the circumstances involved herein, and that the applicant is an aged lady having clean antecedents and who has already joined and participated in the investigation, are prima facie sufficient for this Court to be convinced in granting anticipatory bail to the applicant herein. Thus, the applicant has been able to make out a case for grant of anticipatory bail. 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.

11. 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 her 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 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 she so wishes to change her residential address, she shall immediately intimate about the same to the I.O. by way of an affidavit.
- ii. Applicant shall surrender her Passport to the I.O., within three days. If she does not possess the same, she 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. She 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 her 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 prosecution This is a digitally signed order.

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

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

14. 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 DECEMBER 1, 2023/So This is a digitally signed order.

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