

Keshav Gautam vs State Of Gncd on 2 May, 2024

Author: Amit Sharma

Bench: Amit Sharma

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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ BAIL APPLN. 934/2024 & CRL.M.A. 8142/2024
protection), 10969/2024 (on record count

KESHAV GAUTAM

Through:

STATE OF GNCTD

Through:

CORAM:

HON'BLE MR. JUSTICE AMIT SHARMA

% 02.05.2024

1. The present application under Section 438 of the Cr.P.C. seeks anticipatory bail in case FIR No. 72/2024, under Sections 354A/509 of the IPC and Sections 67/67A of the Information Technology Act, 2000, (for short „IT Act) registered at P.S. Janakpuri.

2. The case of the prosecution, as per status report dated 05.04.2024 authored by Insp. Yashpal Singh, SHO, PS Janakpuri, is as follows:

"Most respectfully it is submitted that the FIR No. 72/2024 U/S 354A/509 IPC & 67/67A IT Act dated 16/02/2024 PS Janakpuri. New Delhi was registered on the complaint Ms. Divya Gautam W/o Rajender Gautam R/o A/1/228, Janakpuri, Delhi. The brief facts of the case are that the complainant alleged that her son accused/petitioner started to posts various explicit and indecent post against her on the 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 07/05/2024 at 01:32:12 social media. Complainant further alleged that

accused is continuously making posts included posts about various false and defamatory allegations for which St. Thomas school, herself and principal of school also filed a case of defamation in the Hon'ble High court and vide order dated 24.12.2023 the Hon'ble High Court restrained him from posting such defamatory and abusive posts but accused is continuously making false allegations against her character and writing all false stories about her character, voyeurism, stalking, attacking her with sexually harassing remarks to outrage 'her modesty on social media platforms by using her picture/photos on social media profiles, posts, reels with specially created sexually explicit remarks on his social media accounts and using filthy and abusive language.

2. That she further alleged that on 5.12.2023 he posted one of her photo with him and written "Jisko bhi St. Thomas Delhi office sex chea ho contact 9899777282 because nobody does it better than manager st. Thomas divya ji.....!". Further on same date he wrote "jisko bhi st thomas delhi office sex chea ho-contact 9899777282 because nobody does it better than st. Thomar divya jiiiiiii-I know this thing for sure- naresh rana knows it s better". Further in some of the posts on 6TH January 2024, he has written about her as prostitute and most abusive language ever saying "Divya Gautam owner st thomas delhi, dwarka goyla randi mother I have yaani I have prostitute mother.... Loves sex from big penis and long lasting and young man call prostitute MILF 9899777282,".

3. That she further also alleged that accused/petitioner in one of the reels, he had used her picture and posted on his reels "Manager, st. Thomas school dwarka delhi enjoys getting son keshav arrested in Tihar jail, social boycott him.and.then, enjoy in foreign locations with young strong men like. Cougar... divya 9899777282 for enjoyment I st. Thomas. school office ... before I get arrested again by mother divya by bribing police and lawyer and judges. enjoy sex with manager divya madam 9899777282 .. young fair and like M.I.L.F. She further alleged that there are so many other posts in which accused is making abusive reels, videos, photographs and doing character assassination of her and her family members using his all-social media accounts, social media channels at YouTube, WhatsApp, Facebook, Instagram and also making threatening calls to me calling me "randi and . other abusive remarks and · assertions. Hence on the above said complaint, the present case registered and investigation of the case has been carried out.

4. It is pertinent to mention here that a case vide FIR No. 189/23 U/s 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 07/05/2024 at 01:32:12 455/427 IPC has already been registered in PS Janakpuri on the complaint of the applicant against her son for act/offence committed by him on 03.07.2023. Accused/her son/respondent No. 2 was arrested in the above-mentioned case on 13.07.2023 and he was granted bail by the Hon ble Court vide order dated 17.07.2023 with the condition "that he shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade them from disclosing such facts to the court or to any police officer or taper with the evidence".

5. That during course of investigating petitioner filed and anticipatory bail application before the Hon ble ASJ court Dwarka and the same was dismissed vide order dated 29.02.2024 and the petitioner filed the same application before the Hon ble High Court of Delhi.

6. That on the direction of the Hon ble High Court of Delhi, the petitioner joined the investigation on 26.03.2024. however he was directed to join the investigation on 14.03.2024 at 5:00 PM at PS Janakpuri, New Delhi. During the interrogation of he denied all allegation leveled upon him and didn't co-operate during the interrogation. He neither provided complete details of his social media accounts nor disclosed the details of devices used by the him to operate his social media accounts. Accused/applicant was again called for join the investigation on 04.04.2024 but the petitioner didn't provide the details which were required from him.

7. That during course of investigation a notice u/s 91 Cr.P,C was served to the complainant for providing necessary details for the purpose of investigation and same have been provide by the complainant. f:urther on analysis of the CAF of the mobile phones, i.e., 9910110664 & 8076182291 from which the Whats APP statuses were posted, the ownership was found in the name of petitioner.

8. During the course of investigation, notices u/s 91 CrPC have been sent to facebook, Instagram etc to provide registrant details as well as IP Logs and the reply of the same is awaited.

Ground of opposing bail of accused:-

1. Investigation of the case is in nascent stage and there are high chances that the accused can any inducement, threat of promise to any person acquainted with the facts of the case and complainant so as to dissuade him from disclosing such facts to the investigating officer or hon ble court.
2. Allegation levelled against the accused person are serious and grave in nature.
3. Despite various directions of Hon'ble courts, accused is This is a digitally signed order.

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4. Custodial interrogation of accused is required to find OLit reason as why and in which circumstances; he circulated/posted above said offensive posts/reels/comments on social media.

5. Custodial interrogation of accused is required to find out his motive/intention behind all these posts/comments/reels and trace various other social media accounts which have been created to post all these offensive posts, if any.

6. Devices i.e mobile phones, laptops/computers and broadband etc are to be recovered at the instance of accused person which used in the commission of offence.

7. There is no permanent address of the accused at present. If granted bail, he may breach the bail conditions."

3. Learned counsel appearing on behalf of the applicant submits that the present FIR was registered at the instance of the mother of the applicant, on account of a property dispute between the parties. He further submitted that the messages which are subject matter of the present FIR as well as the facebook posts have not been disseminated by the applicant. Learned counsel further submitted that allegations in the present case are false and have been motivated against the latter as the complainant in connivance with her sister and some other person is trying to compel the applicant to relinquish his share in the family business and property of his father.

4. Learned counsel further submitted that the complainant has registered the present FIR with an intention to extract money and compel the applicant to relinquish his share in St. Thomas school and the property of his father. It is also submitted that the applicant has handed over his mobile phone to the Investigating Officer, from which the alleged information has been disseminated. However, the IO has not taken it in his custody.

5. Learned counsel for the applicant submits that from the facts of the This is a digitally signed order.

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6. In support of the aforesaid contention, the learned counsel for the applicant relied upon the following judgments:

- i. Ashcroft, Attorney General, et al. v. Free Speech Coalition et al. 535 US 2344
- ii. Ritesh Sidhwani and Another v. State of UP, 2021:AHC:158454/DB (Paras 31 and 32)
- iii. Vijesh v. State of Kerala, 2021: KER: 3230 (Paras 6 and 7)
- iv. Jagat Singh v. State of Uttar Pradesh and Anr, 2020:AHC:56390 (Para-6)
- v. G. Venkateshwara Rao v. The State of A.P, Writ Petition No. 1429 of 2020, decided on 23.04.2020 by the learned Single Bench of the High Court of Andhra Pradesh (Para-11).

7. Reliance was placed on the aforesaid judgments by learned counsel for the applicant to show that the alleged post attributed to the present applicant does not come within the meaning of „sexually explicit act or conduct . It is further submitted that Section 67A of the IT Act contemplates pictorial depiction of actual or simulated sexual acts including sexual intercourse etc. and therefore the alleged post would not come under the said definition.

8. Per contra, learned APP for the State, assisted by learned Senior Counsel for the complainant, submits that the allegations in the present case are serious in nature as the applicant has made abusive statements and disseminated objectionable posts on various social media platforms whereby This is a digitally signed order.

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9. Learned APP for the State further submits that the applicant was previously arrested on 03.07.2023 in case FIR No. 189/2023, under Sections 455/427 of the IPC, registered at PS Janakpuri on the complaint of the present complainant however, he was released on bail on 17.07.2023 by the learned Metropolitan Magistrate, Dwarka Court, New Delhi, subject to the condition that "he shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade them from disclosing such facts to the Court or to any police officer or tamper with the evidence.

10. Learned Senior Counsel appearing on behalf of the complainant submits that Section 67 and 67A of the IT Act have to be read together and therefore the post attributed to the present applicant would come within the purview of Section 67A of the IT Act.

11. In support of the aforesaid contention Learned Senior Counsel for the complainant has placed reliance upon the following judgements:

i Apoorva Arora and Another v. State (Govt. of NCT of Delhi) and Another, 2024 SCC OnLine SC 325 (Para 47) ii Majieesh K. Mathew v. State of Kerala, 2018 SCC OnLine Ker 23374 (Paras 10, 11, 12 and 13)

12. Learned Senior Counsel submits that in a suit for defamation CS(OS) 867/2023 by the complainant, the learned Single Judge of this Court vide order dated 22.12.2023 had observed and recorded as under:

"18.1. Till the next date of hearing, Defendant No. 1 or anyone acting on his behalf, is restrained from uploading, circulating, or posting any content or remarks which are identical or similar to the messages/ photographs/ statuses reproduced at Pages No. 249 to 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 07/05/2024 at 01:32:13 267 and Pages No. 327 to 332 of the Plaintiffs documents, on any social media platforms.

18.2. Defendant No. 1 or anyone acting on his behalf shall not create or operate any fake YouTube or other social media accounts in the name of Plaintiff No. 1 to post the

content impugned in the present suit."

13. It is further pointed out that in W.P.(CRL) 1225/2024 filed on behalf of the applicant, the learned Division Bench of this Court vide order dated 23.04.2024 had observed and held as under:

"12. At this stage, the petitioner, who is appearing via video- conferencing has intervened the court proceedings by using inappropriate words undermining the dignity of the Court. This court has cautioned the petitioner and even asked his counsel to guide the petitioner to maintain the decorum. But the petitioner has not relented and continues to challenge the majesty of Court.

13. Learned counsel appearing on behalf of the petitioner, after noticing such behaviour of petitioner, tenders apology and also seeks his discharge as counsel in the matter. Such request shall be considered on the next date in the presence of the petitioner.

14. In view of the fact that the petitioner has, with apparent and deliberate intent, used inappropriate and derogatory words, this Court hereby issues a show-cause notice of contempt against the petitioner as to why he should not be punished under the Contempt of Courts Act. He shall appear in person on the next date and would be at liberty to file affidavit within a week from today explaining his conduct.

15. We may also note that in addition to above, Mr. Rakesh Kr. Khanna, learned senior counsel appearing for respondents Nos. 5, 6 and 7 has apprised that he himself had received a message from petitioner herein only from one mobile number i.e. 9324171374 and such message was containing derogatory, obscene and vulgar words for him. On being queried, the petitioner states that he does not know about the said number. The SHO of Police Station Tilak Marg is directed to apprise as to who is the registered subscriber of the said number and to file a status report within a week."

14. Heard the learned counsel for the parties and pursued the record.

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15. The present applicant was granted interim protection by this Court vide order dated 15.03.2024, on the statement made by the counsel for the applicant that the messages and the post which are subject matter of the present FIR were not transmitted by the applicant. However, during the course of the investigation, it has come on record that the applicant did not cooperate during interrogation. He did not provide the details of social media accounts or disclosed the details of devices used by him to operate his social media accounts. It is recorded in the status report that on the analysis of Customer Application Form („CAF) of the mobile phones, i.e., 9910110664 and 8076182291 from

which WhatsApp updates were posted, the same was found in the name of the present applicant. The applicant did not provide the mobile phone which he was using at the relevant point of time. It is also a matter of record that the address provided by the applicant in the present application, i.e., DLF Cyber City, DLF Phase-3, Sector-24, Gurgaon-122000 is incomplete and without any further details of his address. It is a matter of record that despite directions, the applicant has, on the basis of preliminary enquiry, prima facie posted the posts as mentioned in the FIR.

16. So far as the applicability of Section 67A of the IT Act is concerned, it is noted that the investigation in the present case is at a very initial stage. The applicant, as noted, has not cooperated in the investigation and has not provided all the details of the social media accounts as well as the devices and only after a thorough investigation with respect to the said material, the evidence would come on record.

17. After considering the entire material as discussed hereinabove including the antecedents and conduct of the present applicant, this Court is This is a digitally signed order.

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18. In view of the above, the present application is dismissed and disposed of accordingly.

19. Interim protection granted to the applicant vide order dated 14.03.2024 stands vacated.

20. Needless to state, nothing mentioned hereinabove is an opinion on the merits of the case and any observations made are only for the purpose of the present application.

21. Pending application(s), if any, also stand disposed of.

22. Order be uploaded on the website of this Court forthwith.

AMIT SHARMA, J MAY 02, 2024/bsr Click here to check corrigendum, if any This is a digitally signed order.

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