

## **Sunil vs The State Of Madhya Pradesh on 5 August, 2021**

**Author: Shailendra Shukla**

**Bench: Shailendra Shukla**

HIGH COURT OF MADHYA PRADESH MCRC No.19745/2021 (Sunil Vs. State of M.P. and Anr.)  
Indore, Dated : 5.8.2021 Heard through video conferencing.

Shri S.K. Vyas, learned senior counsel with Shri L.S. Chandiramani and Shri Harshwardhan Pathak, learned counsel for the applicant.

Shri Hemant Sharma, learned Public Prosecutor for the non-applicant/State.

Prosecutrix present in person through video conferencing.

Heard. Perused the case diary.

Submissions were made on first application filed under Section 438 of Cr.P.C. for grant of anticipatory bail. Applicant - Sunil S/o Kailash Kothari is apprehending his arrest in connection with Crime No.71/2021 registered at Police Station-Mahila Thana, Indore for allegedly committing the offence punishable under Sections 376, 506 of IPC.

The prosecution story was that an FIR was lodged by the prosecutrix on 17.3.2021, in which she made allegation that in the year 2004 she had received a random call on her phone at Neemuch and the caller told that he had called by mistake and thereafter the caller started making frequent calls to her introducing himself as one Sanjay Kothari and offered to get her employed in Ambika Solvex Pvt. Ltd. at Indore. Prosecutrix was inclined to appear for competitive examination. The prosecutrix assented and she met the applicant at the office of Ambika Solvex situated at Sapna-Sangeeta area on 13.12.2004. There he closed the gate of the office and committed rape upon her TRILOK SINGH SAVNER Date: 2021.08.06 16:00:29 IST HIGH COURT OF MADHYA PRADESH and threatened her as well. The prosecutrix ran to a distance and found a person, who helped her in boarding a train to Neemuch. Prosecutrix being in fear and out of shame, did not lodge report but was constantly being haunted by the incident and, therefore, she filed an application in 2007 at Police Station Manasa but she was informed that the name of the person and address, as provided by her, was incorrect. Meanwhile prosecutrix continued to try to look for the applicant. On 2.4.2019 she discovered on facebook that applicant who had named himself as Sanjay Kothari, was in fact Sunil Kothari. She thereafter filed various complaints to the police from 4.4.2019 to 31.12.2019 and ultimately lodged the report.

Both the parties have filed number of documents to bolster their submissions.

Learned senior counsel for the applicant has filed copy of a writ petition filed by complainant, in

which she had prayed to quash the notice issued against her. This notice was issued against her when the applicant had lodged a complaint against her regarding blackmailing and attempt for extortion, leading the police to issue notice against the prosecutrix. The aforesaid Writ Petition No.8097/2019 was dismissed on 13.5.2019 on the ground that the remedy lied with the prosecutrix to file anticipatory bail application. Learned counsel has further submitted that the contents in the FIR lodged by the prosecutrix are very different from the contents as narrated in the writ petition filed by her. In the writ petition the month of incident has been shown to be October 2004, whereas in the FIR it is 13.12.2004. In the writ petition the prosecutrix has stated that she knew the applicant from last 15 years, whereas in SAN TRILOK SINGH SAVNER Date: 2021.08.06 16:00:29 IST HIGH COURT OF MADHYA PRADESH the FIR she has stated that she chanced upon applicant by way of random call. This apart, as per the learned senior counsel, the prosecutrix in her writ petition has only stated that the applicant committed inappropriate act against her and no mention of physical exploitation is there. The Court's attention has been drawn to Annexure A/3 which is a complaint filed against the prosecutrix by the applicant addressed to SHO, Police Station Industrial Area, Jaora, in which allegations of blackmailing and extortion has been made. Further attention was drawn to Annexure A/6 which are the statements recorded by the police on 22.5.2019, in which she has stated that she wants no action against the applicant Sunil Kothari and in future also she would not initiate any legal action against him.

The prosecutrix when queried, admitted to having recorded such statements but has stated that she was frightened at that time since a deliberate car accident was caused by the applicant resulting in serious injuries to her parents and, therefore, out of fear she made such statements. However, no such report regarding the accident is placed on record.

Regarding the submission of learned senior counsel pointing out differences of statements in the writ petition and the FIR, the prosecutrix has stated that she does not know English and was not conversant with the contents in the writ petition. However, the writ petition is always supported with an affidavit, therefore, it is not understandable as to how the affidavit was sworn by the prosecutrix without knowing the contents of writ petition.

Learned senior counsel for the applicant has further drawn Court's attention to document filed on 2.8.2021 SAN TRILOK SINGH SAVNER Date: 2021.08.06 16:00:29 IST HIGH COURT OF MADHYA PRADESH which is the complaint addressed to SP, Indore purportedly written by the prosecutrix, which is a complaint regarding domestic violence against her husband Deshbandhu Arya. In this complaint it has been mentioned that the prosecutrix and Deshbandhu Arya knew each other from 2004. The prosecutrix was already married at that time but her husband suffered from mental debility. Deshbandhu Arya got her divorced from her indisposed husband and got married to her but later on started misbehaving with her and had also assaulted her, resulting in serious injuries to her and on 31.12.2020 her car was fired upon with a firearm and her husband Deshbandhu Arya told her that this time she has escaped and now she should keep her mouth shut. The prosecutrix when confronted with this document, has stated that this document is absolutely forged and she is not signatory to this document. Learned senior counsel for the applicant has stated that the mobile numbers given in the aforesaid complaint are the same as given in FIR by prosecutrix.

At this stage, the aforesaid document bearing seal of SP, Mandsaur and SHO Kotwali, Mandsaur cannot be outrightly stated to be forged document. Prosecutrix has admitted that the aforesaid person named as Deshbandhu Arya is a member of Juvenile Justice Board at Neemuch and prosecutrix is president of Child Welfare Committee at Neemuch. The prosecutrix could at least have filed an affidavit of Deshbandhu Arya in support of her averment that the aforesaid document is forged.

The prosecutrix had filed an application under Section 307 of IPC, in which it had been alleged that her car had been fired at with a firearm, which is placed in her SAN TRILOK SINGH SAVNER Date: 2021.08.06 16:00:29 IST HIGH COURT OF MADHYA PRADESH compilation and she had apprehended that it was the applicant who was involved in the aforesaid fire. It is to counter such allegations that the applicant has filed the aforesaid document in which Deshbandhu Arya has been shown to be involved in making such allegations.

Thus, learned counsel for the applicant has submitted that the allegations made by prosecutrix are false, extremely belated and are mere attempts of blackmailing and extorting money from the applicant.

The prosecutrix, on the other hand, has filed number of complaints bearing seal of police station Manasa, district Neemuch, which date back to the year 2007. She has filed copy of complaint dated 22.1.2007 in which she has made a mentioned regarding rape committed upon her in December 2004 by one Sanjay Kothari. This application bears seal of SHO Manasa. Further reminder letter dated 10.8.2008 has been sent by the prosecutrix in which it has been expressed that no action has been taken regarding report lodged by her. One another complaint dated 3.5.2019 has been filed in which she has complained to SHO Manasa that friend of Sunil Kothari namely Subhash Khariwal has threatened her at her house. Further letter dated 4.11.2008, which does not bear sign, has also been written to S.P. Neemuch in which it has been mentioned that she had been subjected to rape, that the Manasa police is barely stating that there is no one by name Sanjay Kothari, that she pleads that the proprietor of Ambika Solvex Ltd. be strictly questioned, only then the actual name of Sanjay Kothari would be revealed.

Thus, the prosecutrix has stated that regarding the incident, which had occurred in the year 2004, she has SAN TRILOK SINGH SAVNER Date: 2021.08.06 16:00:29 IST HIGH COURT OF MADHYA PRADESH already lodged a complaint in the year 2007 but the police was not able to find the applicant because his name was Sunil Kothari and not Sanjay Kothari and it was only when she chanced upon the actual name of applicant through Facebook that she had lodged this complaint.

The prosecutrix has made submissions charged with emotions in which it has been stated that just because applicant is well-heeled person, he has been able to manage the police and the State is doing nothing to give relief to her, who is fighting her lone battle. She has filed number of complaints to top authorities of Indian Government pleading for relief which have been responded as well. Regarding the enquiry report submitted by CSP, Jaora, district Ratlam Mr. Agam Jain, who has mentioned that both parties do not want to proceed against each other. The prosecutrix in her letter addressed to President of India has stated that the aforesaid report by Agam Jain is an attempt to

favour the applicant only because the applicant is a big industrialist.

Apart from the prosecutrix, learned Public Prosecutor for the State has also made his submissions and stated that the matter is still under investigation and proper interrogation of the applicant in custody is must for completing the investigation and opposed the anticipatory bail application.

Considered the rival contentions.

While considering the bail application, the factum of delay in lodging report assumes significance. Undoubtedly, even assuming that the first complaint was filed in the year 2007, that too was filed 3 years after the incident, the delay has not been explained properly. Admittedly, the SAN TRILOK SINGH SAVNER Date: 2021.08.06 16:00:29 IST HIGH COURT OF MADHYA PRADESH prosecutrix was major age-wise even in the year 2004 when the incident had occurred. The place of incident was at Indore. The prosecutrix could have lodged a report at Indore soon after the incident, which was not done. The identity of the applicant then could have been revealed, if police had made investigation and searched the premises of Ambika Solvex Ltd. She could have stated in FIR that she would be able to identify the applicant once he is subjected to identification.

This apart other submissions which have been made by learned Senior counsel assumes importance while considering the anticipatory bail application. The Court is aware of the fact that anticipatory bail in serious cases such as rape etc. are scarcely granted. However, in backdrop of the facts discussed earlier, this appears to be one such case in which the applicant deserves to be granted anticipatory bail. The prosecutrix has lamented that if the application is allowed, then she would become helpless and her future will be jeopardised and she would loose faith in justice dispensation system. However, such apprehension is misconceived. It is not that the case itself is being quashed. The only order which has been passed in respect of application for anticipatory bail to the applicant.

On due consideration of the aforesaid submissions, mainly those advanced by learned counsel for the applicant, without commenting upon the merits of the case, this application for grant of anticipatory bail is allowed. It is directed that in the event of arrest, the applicant - Sunil Kothari shall not be arrested by the Arresting Officer, subject to his furnishing a personal bond in the sum of SAN TRILOK SINGH SAVNER Date: 2021.08.06 16:00:29 IST HIGH COURT OF MADHYA PRADESH Rs.50,000/- with one local solvent surety of the like amount to the satisfaction of the Arresting Officer, subject to abiding the conditions enumerated under Section 438 (2) of the Cr.P.C. and he shall give due assistance to the Investigating Officer in the matter. The applicant shall appear before the Investigating Officer on 12.8.2021 and on all other subsequent dates, as may be fixed by the Investigating Officer from time to time.

M.Cr.C. No.19745/2021 is allowed and stands disposed of in the aforesaid terms.

Certified copy as per rules.

(Shailendra Shukla) Judge trilok/-

VerifiedDigitally

SAN

TRILOK SINGH