

Sanjay Jain vs State Of Nct Of Delhi on 7 December, 2017

Author: Sangita Dhingra Sehgal

Bench: Sangita Dhingra Sehgal

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* IN THE HIGH COURT OF DELHI AT NEW DELHI
Order reserved on 05th December, 2017
Order pronounced on 7th December, 2017
+ BAIL APPLN. 1752/2017 & CRL.M.A. 14404/2017
SANJAY JAINPetitioner
Through: Ms. Ishita Jain, Advocate
versus
STATE OF NCT OF DELHIRespondent

Through: Mr. Amit Ahlawat, APP for the State. CORAM:

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

1. By way of the present petition filed under Section 438 of the Criminal Procedure Code, 1973 (hereinafter referred as 'Cr.P.C.'), the petitioner seeks grant of anticipatory bail in respect of FIR No. 0308 dated 21.07.2017, under Section 354/354A/506 of The Indian Penal Code, 1860 (hereinafter referred as 'IPC'), registered by P.S. Jafarabad, New-Delhi.

2. Briefly stated the facts of the case are that the complaint was lodged on 21.07.2017 by one Dimple who alleged that, on 17.07.2017 at around 4 pm her brother-in-law (devar), who used to stay with her mother-in-law, had come to her house when she was alone at home and forcefully tried to make physical relations with her and even threatened her when she objected. The alleged incident was narrated by her, to her husband who did not pay any heed to it and then, later she narrated it to her brother and her aunt.

She reported the incident to the police officials and the complaint was lodged under the Sections 354/354A/506 of IPC.

3. Ms. Ishita Jain, the learned counsel for the petitioner contended that that the present FIR filed against the petitioner is false and fabricated; that the petitioner visited the house of the prosecutrix on an invitation made by her for lunch; that the prosecutrix threatens her husband and his family members many a times of filing false cases of domestic violence, sexual harassment etc; that in the year 2005, she filed a false case of domestic violence against her husband, which was later on withdrawn by her; that her behavior towards her husband and his family is unreasonable; that she

even went on a vacation, with her husband along with the petitioner and a friend, a month before filing the FIR. Hence, the present petition should be allowed.

4. Per Contra, learned APP has vehemently opposed the bail application by stating that the petitioner has been evading arrest and has not joined the investigation. He further alleged that the anticipatory bail application has been previously rejected by the learned ASJ keeping in view the seriousness of the allegations. Hence, the present petition is liable to be set aside.

5. I have heard the learned counsel for the parties and perused the material available on record.

6. Before advertng to the question raised in the present petition, it is seen that the petitioner is charged for the offences under Sections 354/354A/506 of IPC. Section 354 IPC, makes penal the assault or use of criminal force to a woman to outrage her modesty. The essential ingredients of offence under Section 354 IPC are: (a) that the assault must be on a woman; (b) that the accused must have used criminal force on her; (c) that the criminal force must have been used on the woman intending thereby to outrage her modesty. In *Raju Pandurang Mahale vs State Of Maharashtra And Anr* reported in (2004) 4 SCC 371, it has been observed that :

"What constitutes an outrage to female modesty is nowhere defined. The essence of a woman's modesty is her sex. The culpable intention of the accused is the crux of the matter. The reaction of the woman is very relevant, but its absence is not always decisive. Modesty in this Section is an attribute associated with female human beings as a class. It is a virtue which attaches to a female owing to her sex. The act of pulling a women, removing her saree, coupled with a request for sexual intercourse, is such as would be an outrage to the modesty of a woman; and knowledge, that modesty is likely to be outraged, is sufficient to constitute the offence without any deliberate intention having such outrage alone for its object. As indicated above, the word 'modesty' is not defined in IPC. The shorter Oxford Dictionary (Third Edn.) defines the word 'modesty' in relation to woman as follows: "Decorous in manner and conduct; not forward or lowe; Shame-fast: Scrupulously chaste."

Modesty is defined as the quality of being modest; and in relation to woman, "womanly propriety of behaviour; scrupulous chastity of thought, speech and conduct." It is the reserve or sense of shame proceeding from instinctive aversion to impure or coarse suggestions. As observed by Justice Patterson in *Rex v. James Llyod*, (1876) 7 C & P 817. In order to find the accused guilty of an assault with intent to commit a rape, court must be satisfied that the accused, when he laid hold of the prosecutrix, not only desired to gratify his passions upon her person but that he intended to do so at all events, and notwithstanding any resistance on her part. The point of distinction between an offence of attempt to commit rape and to commit indecent assault is that there should be some action on the part of the accused which would show that he was just going to have sexual connection with her. Webster's Third New International Dictionary of the English Language defines modesty as "freedom from coarseness, indelicacy or indecency, a regard for propriety in dress, speech or conduct". In the Oxford English Dictionary (1933 Edn.), the meaning of the word 'modesty' is given as "womanly propriety of behaviour: scrupulous chastity of thought, speech and conduct (in man or

woman); reserve or sense of shame proceeding from instinctive aversion to impure or coarse suggestions." In *State of Punjab v. Major Singh*, AIR (1967) SC 63 a question arose whether a female child of seven and a half months could be said to be possessed of 'modesty' which could be outraged. In answering the above question the majority view was that when any act done to or in the presence of a woman is clearly suggestive of sex according to the common notions of mankind that must fall within the mischief of Section 354 IPC. Needless to say, the "common notions of mankind" referred to have to be gauged by contemporary societal standards. It was further observed in the said case that the essence of a woman's modesty is her sex and from her very birth she possess the modesty which is the attribute of her sex. From the above dictionary meaning of 'modesty' and the interpretation given to that word by this Court in *Major Singh's case* (supra) the ultimate test for ascertaining whether modesty has been outraged is whether the action of the offender is such as could be perceived as one which is capable of shocking the sense of decency of a woman. The above position was noted in *Rupan Deal Bajaj (Mrs.) and Anr. v.*

Kanwar Pal Singh Gill and Anr., [1995] 6 SCC 194.

When the above test is applied in the present case, keeping in view the total fact situation, the inevitable conclusion is that the acts of accused appellant and the concrete role be consistently played from the beginning proved combination of persons and minds as well and as such amounted to "outraging of her modesty" for it was an affront to the normal sense of feminist decency."

7. The petitioner has been charged for the offence under Section 354 IPC i.e assault/criminal force to a woman to outrage her modesty as well as for the offence under Section 354A IPC i.e physical contact with explicit sexual overtures and demand of sexual favour. Further, for the offence under Section 506 IPC, which states that "506. Punishment for criminal intimidation.-- Whoever commits, the offence of criminal intimidation shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both; If threat be to cause death or grievous hurt, etc.--And if the threat be to cause death or grievous hurt, or to cause the destruction of any property by fire, or to cause an offence punishable with death or 1[imprisonment for life], or with imprisonment for a term which may extend to seven years, or to impute, unchastity to a woman, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both."

8. Keeping in view the above legal proposition, it is observed in the facts and circumstances of the present case that the prosecutrix has made specific allegations in her complaint against the petitioner during lodging of the FIR and has further stated on similar lines during recording of her statements under Section 164 Cr.P.C where it has been explicitly stated by her that the petitioner always tried to make physical relations with her in absence of her husband; that even her husband as well as her mother-in-law never supported her to proceed against the petitioner; that on 17.07.2017, he visited her house and forcibly tried kissing her, touching her, tore off her clothes and harassed her.

9. On perusal of the statements made by her against the petitioner, it is observed that the allegations against the petitioner are grave and serious. Also, in Status Report, it has been stated that the

investigation is still in process and the petitioner herein is evading arrest by not joining the investigation. Thus, the chance of the petitioner escaping the procedure of law, tampering with the evidence or threatening the complainant exists. In my view, since the case is at the threshold and the investigations are underway, it will be practically scuttling the investigation in case the anticipatory bail is granted to the petitioner which will create hurdles in arriving at the truth.

10. Determining the parameters in granting anticipatory bail in cases of serious offences. The Supreme Court in Bhadrash Bipinbhai Sheth vs State Of Gujarat & Anr reported in (2016) 1 SCC 152 after analyzing the entire law has observed as under:-

"(a) The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;

(b) The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a court in respect of any cognizable offence;

(c) The possibility of the applicant to flee from justice;

(d) The possibility of the accused's likelihood to repeat similar or other offences;

(e) Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her;

(f) Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people;

(g) The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role of the accused in the case. The cases in which the accused is implicated with the help of Sections 34 and 149 of the Penal Code, 1860 the court should consider with even greater care and caution, because overimplication in the cases is a matter of common knowledge and concern;

(h) While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors, namely, no prejudice should be caused to free, fair and full investigation, and there should be prevention of harassment, humiliation and unjustified detention of the accused;

(i) The Court should consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;

(j) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the

event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail."

11. In view of the aforesaid settled principles, the facts and circumstances of the present case and perusing the allegations leveled against the petitioner, and considering the gravity of offence, this court is not inclined to grant anticipatory bail to the petitioner. Accordingly, the petition stands dismissed along with the pending application.

12. Observations made in the order shall have no impact on the merits of the case.

SANGITA DHINGRA SEHGAL, J DECEMBER 7, 2017 gr//