

Santosh Giri vs.state

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Court : Delhi

Decided On : Oct-24-2017

Appellant : Santosh Giri

Respondent : State

Judgement :

§~ * IN THE HIGH COURT OF DELHI AT NEW DELHI + BAIL APPLN. 256/2017
Order reserved on :

15. h September, 2017 Order pronounced on :

24. h October, 2017 SANTOSH GIRI ..Petitioner Through: Mr. Akhank Jain, Advocate. STATE Versus ..Respondent Through : Mr. Amit Ahlawat, APP for State with W/SI Ekta from PS Nangloi. Mr. Zakir Husain, Advocate for victim/complainant. CORAM: HONBLE MS. JUSTICE SANGITA DHINGRA SEHGAL1 By way of the present petition filed under Section 439 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the 'Cr.P.C.') the petitioner seeks grant of regular bail in FIR No.787/2014 under Sections 376/323/506/34/354/354A of the Indian Penal Code, 1860 (hereinafter referred to as 'IPC') and Section 6 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as 'POCSO') registered at P.S Nangloi, Delhi. The petitioner is stated to be in judicial custody since 21.03.2016. Status report is on record.

2. It is the case of the complainant that her husband/Santosh Giri/present petitioner, has been harassing her and demanding dowry since the solemnization of their marriage in the year 2003. Bail Appln. 256/2017 Page 1 of 6 She alleged that her husband alongwith his sister /Indu Bharati, brother in-law/Nand Lal Bharati and two elder brothers/ Rajesh Giri and Vijay Giri used to give beatings to her and also forced her to sleep with his brothers by threatening her that he would kill her and her other family members. Complainant further alleged that her husband's elder brothers (as named above) committed rape upon her in the very presence of his sister/Indu Bharati and brother in-law/Nand Lal Bharati. She stated that on 07.06.2014 her husband gave beatings to her and their children and turned them out of the house whereafter on the same day he fled with his children. The complainant returned to her husband's house on 21st September 2014 as her husband agreed that she could meet her children and the very next day he again gave beatings to the complainant and their children. It is further alleged that the complainant when enquired from her children found that her children were kept away in Banaras for two months where other family members of her husband ill treated her children. Her children were also kept by one Tejinder Singh @ Lucky who tried to do wrong act with her daughter. Thereafter she brought her children back on 23rd September 2014. Therefore on the basis of the said complaint, FIR was registered under Sections 376/323/506/34/354/354A of IPC and Section 6 of POCSO Act.

3. The previous application for grant of regular bail filed by the petitioner before the Additional Sessions Judge, was dismissed vide order dated 21.11.2016, on consideration of the facts and nature of allegations leveled against the petitioner and gravity of Bail Appln. 256/2017 Page 2 of 6 alleged offence committed by him. Hence, the present bail application.

4. Mr. Aklank Jain, learned counsel for the petitioner contended that the present complaint has been lodged by the complainant to exercise pressure upon the petitioner; that the complainant had fraudulently married one Parampreet Singh Viridi on 26.11.2013 on the basis of forged and fabricated documents under the assumed name of Manpreet without seeking divorce from the petitioner; that the petitioner had lodged a complaint on 07.06.2014 against the complainant when

she eloped with Parampreet Singh Virdi leaving her children at her parent's house; that after knowing the factum of her second marriage the petitioner lodged another complaint on 10.06.2014 which was registered vide DD No.5B and instituted case of cheating, forgery and bigamy against the complainant which is pending adjudication at Tis Hazari Court; that the complainant fled away with the children on 23.09.2014 whereafter the petitioner again lodged a complaint following which a detailed complaint was lodged on 24.10.2014 against the complainant; that the other co-accused have been granted anticipatory bail by the Trial Court vide orders dated 02.06.2016 and 30.09.2016 respectively; that no explanation has come forth from the complainant in respect of delay of 10 years in lodging the FIR as the alleged offence of rape is stated to have been committed in the year 2004 whereas the FIR was registered on 31.10.2014; that as per the prosecution story the complainant ran away with the children on 23.09.2014 whereas the complaint was lodged on Bail Appln. 256/2017 Page 3 of 6 30.10.2014, hence there has been a material delay of 37 days in lodging the complaint; that Section 6 of POCSO Act is not applicable in the present case in view of three material observations made in the MLC dated 19.03.2016 of Suhani Giri/daughter which provides that her internal examination was not conducted, her hymen was found intact and no history of fingering was found from her medical examination; that the complaint was lodged in October 2014 and the petitioner was arrested after 1 year i.e. on 20.03.2016 and during the said period there has not been a single complaint against the petitioner of threat or otherwise; that the investigation in the present case is complete and charge sheet has already been filed and there is no chance of petitioner tampering with the prosecution evidence. Therefore in view of the above circumstances bail be granted to the petitioner.

5. Per contra, Mr. Amit Ahlawat, APP for the State vehemently opposed the bail application of the petitioner and submitted that the petitioner has been actively involved in the commission of a heinous offence; that there is every possibility of accused evading the process of law and threatening the complainant; that the accused is also likely to tamper with the evidence collected during investigation and therefore the present petition be dismissed.

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

7. Perusal of the record reveals that the charges have been framed against the petitioner alongwith other co-accused Tejinder Singh @ Lucky on 04.03.2017 under Section 376-D/354-A/323/5

IPC Bail Appln. 256/2017 Page 4 of 6 and Sections 6 and 12 POCSO Act.

8. The complainant has taken a consistent stand in her statements recorded under Section 161 Cr.P.C. and subsequently under Section 164 Cr.P.C. whereby she has made serious allegations of sexual harassment against the petitioner and other accused persons and that of penetrative sexual assault committed upon her daughter 'X' by the petitioner alongwith co-accused Tejinder Singh @ Lucky.

9. Furthermore, the complainant's daughter/'X' deposed during her Examination-In-Chief as under:-

""On 07.06.2014, in the morning, when my father was leaving for his work, he had beaten my mother, my younger brother and me.....My father had locked us from outside and all three of them i.e. My father, Lucky uncle and the girl had left..... My father had given given us a loaf of bread and we had eaten the same for the two days, we were confined in the room.....My father had put his hand in my trousers and inserted his finger in my private parts....He did this 3-4 times.....Lucky uncle had also done the same thing along with my father.....My father used to force me to drink liquor and on my refusal, he used to throw liquor on me.....Then my father had sent us i.e. my brother and I to Banaras by train.....On the way, Lucky uncle had taken me to the toilet in the train and he had inserted his finger in my private part. When I was crying, Lucky uncle had threatened me the train.....When Lucky uncle used to come there, he used to make me sit on his lap and he used to run his hands in my hair. We were not sent to school. We were told that we should not try to escape as cameras were installed in the house and dogs were outside the house.....""

10. After careful scrutiny of the facts and circumstances of the case, the contents of the FIR in question and other material placed on record and in view of the serious allegations against the petitioner and other factors including severity of the punishment prescribed in law, I find no sufficient ground to grant bail to the petitioner.

11. Accordingly, the present petition stands dismissed.

12. Before parting with the above order, it is made clear that anything observed in the present petition shall not have any bearing on the merits of the case during trial. SANGITA DHINGRA SEHGAL, J OCTOBER24 2017 gr// Bail Appln. 256/2017 Page 6 of 6

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