

Pawan Mishra Vs. The State

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Court : Delhi

Decided On : Nov-18-2014

Judge : Pratibha Rani

Appellant : Pawan Mishra

Respondent : The State

Judgement :

\$~55 * IN THE HIGH COURT OF DELHI AT NEW DELHI Decided on :

18. h November, 2014 % + BAIL APPLN. 2086/2014 PAWAN MISHRA Through :
..... Petitioner Ms.Geeta Luthra, Senior Advocate with Ms.Naina Dubey, Adv.
versus THE STATE Through : Respondent Ms.Rajdipa Behura, APP for the
State with SI Gajender, PS Vijay Vihar. CORAM: HON'BLE MS. JUSTICE
PRATIBHA RANI PRATIBHA RANI, J.

(ORAL) 1. The Petitioner Pawan Mishra is seeking regular bail in case FIR
No.503/2013 under Section 376(2)(f) & (n)/376 IPC, PS Vijay Vihar, Delhi.

2. Chargesheet in the matter has already been filed and the case is at the stage of
Prosecution Evidence wherein the statement of the Complainant/Prosecutrix has
not been recorded so far.

3. Perusal of the contents of the FIR reveals that the Petitioner is husband of
Rinka, who is cousin (daughter of maternal Aunt) of the Prosecutrix.

4. As per the complaint, the Petitioner had been harassing her for about four months prior to registration of FIR (date of FIR is 16.10.2013). In the month of June, she was returning on foot after having talk about her coaching and when she reached Hanuman Mandir, Budh Vihar, Phase-1, the Petitioner met her and offered to drop her on his bike. She did not anticipate any wrong act from him but the Petitioner instead of dropping her, took her to the house of his friend Radhey. When she questioned the Petitioner about his motive to take her there, he assured her that he had no wrong intention. Thereafter, he had some talk with Radhey. After that Radhey left. Then Petitioner pushed her on the bed and increased the volume of T.V. He pressed her mouth and after opening her salwaar did galat kaam forcibly. When she threatened to disclose the incident to the family, the Petitioner informed that he had made her MMS which would be shown to everyone and the reputation of her family would suffer. She kept silent. Thereafter the Petitioner dropped her at some distance from her house and the incident was not disclosed by her to anyone.

5. After a few days, the Petitioner took her to a hotel and again did galat kaam under the threat that her MMS would be shown which will bring bad name to the family. Though she was not willing to go with the Petitioner but she was compelled by him to accompany him.

6. On 10.10.2013, again the Petitioner met her at Rithala Metro Station, snatched her mobile and questioned her as to why she was not listening to him. He also threatened to put her MMS on the net. She became perturbed and on reaching home, informed her mother about she being harassed by her jija for the preceding four months and galat kaam being done thrice by him.

7. The two bail applications filed by the Petitioner before learned Addl. Session Judge have been dismissed vide orders dated 27.12.2013 and 04.01.2014.

8. I have heard Ms.Geeta Luthra, learned Senior Advocate for the Petitioner and Mr.Rajdipa Behura, APP for the State.

9. On behalf of Petitioner, Ms.Geeta Luthra, learned Senior Advocate prayed for release on Petitioner on bail contending that in the FIR, the Prosecutrix had

referred to galat kaam and there is no allegation of rape against the Petitioner. There is an inordinate delay in reporting the matter to the police and due to delay, the material evidence which could have been collected during her medical examination, would have disappeared. While referring to the MLC, learned Senior Advocate for the Petitioner submitted that as per the MLC, there was no injury on the body of the Prosecutrix. Even no MMS was recovered at the instance of the Petitioner. She further submitted that this is a case where the Prosecutrix and her mother wanted to extort money from the Petitioner. In April, 2013, mother of the Prosecutrix took Rs.20,000/- from the Petitioner for a committee. In July, 2013, again the mother of the Prosecutrix demanded Rs.5000/- towards medical expenses for her husband. In October, 2013, the mother of the Prosecutrix again called the Petitioner and demanded Rs.1.5 lacs from the Petitioner for which he refused. On 09.10.2013, the mother of the Prosecutrix called up the Petitioner and asked for money for treatment of the Prosecutrix. However, on 10.10.2013 when the Petitioner was going to his work, he saw the Prosecutrix standing near Rohini Bus Stand. He questioned her about her illness and had an argument over the money being asked from him faking her illness.

10. Ms.Geeta Luthra, learned Senior Advocate for the Petitioner contended that the incident had allegedly taken place at the house of Radhey and thereafter in a hotel. Both the places are thickly populated and had any such incident taken place, it would have been noticed by other persons. The Prosecutrix also failed to mention the specific date, time and location where she was allegedly raped thrice by the Petitioner and even the details of the hotel where she had been taken, have not been given by her. Learned Senior Advocate for the Petitioner further submitted that as per the chargesheet, the Petitioner disclosed that he took the Prosecutrix at Hotel Suraj, Pahar Ganj but there is no CCTV footage or register entry of the said Hotel. The Prosecutrix has nowhere stated about the word Rape or sexual act being committed without her consent and from her statements, it can be summarised that if the sexual activity, if any, which is denied, was consensual. Learned Senior Advocate submitted that this is a case where the Prosecutrix herself is interested in getting the offender punished so there is no question of the Petitioner being able to influence her in any manner whatsoever. Further she had advised the Petitioner to stay out of Delhi and enter Delhi only for a valid reason.

So, there is no apprehension of the Petitioner having any opportunity to influence the Prosecutrix.

11. Learned Senior Advocate for the Petitioner submitted that infact the dispute was over extorting the money from the Petitioner faking the illness of the Prosecutrix and when he saw her standing at the Bus Stand hale and hearty, then the arguments ensued and this FIR has been registered after due deliberation with malafide intentions and ulterior motives. Learned Senior Advocate has relied upon Jagdish Nautiyal v. State 2012 AD (Delhi) 475, Rohit Chauhan v. State (NCT of Delhi) in Bail Appln. No.311/2013 decided on 22.05.2013, Aman Gaur v. State 188 (2012) DLT216 Jose Thettayil v. State House Officer 2013 (3) KLJ646 Deepak Gulati v. State of Haryana AIR 2013 SC2071 and State of Karnataka v. Sureshababu Puk Raj Porral (1994) 1 SCC468 in support of her contentions.

12. Ms.Rajdipa Behura, learned APP for the State strongly opposed the prayer for grant of bail to the Petitioner on the ground that this is a case where the Prosecutrix - an unmarried girl had been repeatedly raped by the Petitioner who was husband of her cousin. Learned APP for the State further submitted that the Prosecutrix was forced to accompany the Petitioner under threat that her MMS would be shown to all in the family and also put on the Internet. It was only when she could not bear any further that she disclosed to her mother and thereafter FIR had been registered. It is further submitted by learned APP that in view of the relationship between the wife of the Petitioner and the Prosecutrix, there is every possibility of the Prosecutrix being influenced, if the Petitioner is released on bail, hence the bail application may be dismissed.

13. I have considered the rival contentions and carefully gone through the record.

14. Before dealing with the contentions raised at bar on behalf of the Petitioner and referring to the case law cited, it is necessary to mention that while exercising the discretion for grant of bail, the Court has to take a prima facie view of the matter and judicially exercise the discretion without critical analysis of the evidence or expressing any opinion about the credibility of the witnesses 15. Ms.Geeta Luthra, learned senior counsel appearing for the Petitioner has relied upon the decision of Jagdish Nautiyals case (supra) praying for grant of bail on the ground

that generalized statement has been made by the Prosecutrix against the Petitioner. Merely because in Jagdish Nautiyals case (supra), this Court has granted bail to the Petitioner on the facts of that case, is no ground to release the accused on bail in every case wherever the consent has been obtained on promise to marry. It may be noted here that the Complainant in the case of Jagdish Nautiyal vs. State (Supra) was a widow having a daughter. The Petitioner was friend of her deceased husband. While representing him to be unmarried, he entered into physical relationship with the Complainant with assurance to take care of daughter of the Complainant. Subsequently, the Complainant came to know about the Petitioner being already married having two children. In the facts and circumstances of that case, the Court considered it to be a case for grant of anticipatory bail.

16. In Rohit Chauhans case (Supra), the facts of the case were that the Complainant was sexually exploited by the Petitioner on promise to marry which he never intended to do and she was also criminally intimidated and blackmailed by threatening that he would upload her pictures/videos on the net in case she refused to maintain sexual relations with him.

17. In the instant case, the Petitioner is Jija (husband of cousin of the Prosecutrix) and therefore, no parity can be drawn by the Petitioner by placing reliance on this case.

18. The Petitioner has also prayed for bail claiming himself to be the sole bread earner of the family with two small children and also that he has roots in the society and there is no possibility of his being fleeing from justice. Learned senior counsel for the Petitioner submitted that merely because the nature of the offence is serious in itself is no ground for denying bail to the Petitioner, if the Petitioner has roots in the society and there are no chances of his fleeing from justice.

19. Further reliance has been placed on Jose Thettayil v. Station House Officer (Supra), wherein the Court has observed that it may not be possible to apply the standards which were once applicable to the conservative and orthodox Indian society while dealing with the accusations made by a rape victim. In the aforesaid case, it was further observed by the Court that a lady who has attained majority

and who is capable of knowing the pros and cons of her act, if freely indulges in sexual activity believing on a promise of marriage, the act does not amount to rape and the conduct cannot be treated as one under misconception of fact. If the allegations in the complaint on the very face of it or even prima facie do not make out the offence alleged or any other offence, then the High Court will be certainly within its power in quashing the proceedings.

20. The Petitioner has also relied upon *Deepak Gulati vs. State of Haryana* (Supra) wherein the Prosecutrix was a major aged about 19 years as well as capable to understand the issue surrounding her marriage to the Appellant and the Court was of the view that the Accused can be convicted if the Court reaches a conclusion that intention of Accused is mala fide and that he has clandestine motives while drawing distinction between rape and consensual sex.

21. Lastly, the Petitioner has relied upon the decision of *State of Karnataka v. Sureshbabu Puk Raj Porral* (supra) wherein while disposing of the appeal filed by the State of Karnataka, challenging the acquittal of the Respondent in a case under Sections 366 and 376 IPC, observed that there was no evidence to show that the Accused had intercourse with her. I am of the view that the Petitioner cannot derive any benefit by placing reliance on the decisions of *Jose Thettayil vs. Station House Officer*; *Deepak Gulati vs. State of Haryana* and *State of Karnataka vs. Sureshbabu Puk Raj Porral* (supra), as the facts in hand are different to the extent that a married man closely related to the Prosecutrix had allegedly committed rape on her repeatedly on different dates under threat to put her MMS on net. Here, it may be observed that merely because MMS has not been recovered is no ground to exercise discretion in favour of the Petitioner for the reason that the Prosecutrix was initially taken on the pretext of dropping home and later she was allegedly threatened to accompany the Petitioner on different dates under threat of showing MMS to everyone/putting MMS on Internet.

22. Now, the plea which is required to be considered by this Court is as to what is the effect of the Petitioner having roots in the society. At the outset, it may be noticed that the Petitioner is married to cousin of the Prosecutrix. There was no ill-will or motive to lodge FIR against the Petitioner, as it would have direct affect on

the matrimonial life of cousin of the Prosecutrix. It may also be noticed that in the FIR itself, it is mentioned that when the mother of the Prosecutrix had a talk with the Petitioner, even at that stage, instead of showing any regret for his alleged acts, he said Tum jo kar lo main iska peecha nahi chhodoonga chahe jo kar lo.

23. The principles governing the exercise of discretion by a Court while considering an application for grant of bail in a serious crime have been dealt with in a catena of judgments by the Hon'ble Supreme Court.

24. The Hon'ble Apex Court in Ram Govind Upadhyay v. Sudarshan Singh and others, (2002) 3 SCC598 it has been observed that the grant of bail though involves exercise of discretionary power of the Court, such exercise of discretion has to be made in a judicious manner and not as a matter of course. Heinous nature of the crime warrants more caution and there is greater chance of rejection of bail, though, however dependent on the factual matrix of the matter. In the said case the Court also referred to the decision in Prahlad Singh Bhati v. N.C.T., Delhi and another, (2001) 4 SCC280 and stated as follows: (a) While granting bail the court has to keep in mind not only the nature of the accusations, but the severity of the punishment, if the accusation entails a conviction and the nature of evidence in support of the accusations. (b) Reasonable apprehensions of the witnesses being tampered with or the apprehension of there being a threat for the complainant should also weigh with the court in the matter of grant of bail. (c) While it is not expected to have the entire evidence establishing the guilt of the accused beyond reasonable doubt but there ought always to be a prima facie satisfaction of the court in support of the charge. (d) 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.

25. Hon'ble Apex Court in the case of Masroor v. State of Uttar Pradesh and Another. (2009) 14 SCC286 while giving emphasis for ascribing reasons for granting of bail, however, brief it may be, a two-Judge Bench observed that there is no denying the fact that the liberty of an individual is precious and is to be

zealously protected by the courts. Nonetheless, such a protection cannot be absolute in every situation. The valuable right of liberty of an individual and the interest of the society in general has to be balanced. Liberty of a person accused of an offence would depend upon the exigencies of the case.

26. Applying the aforesaid principles to the facts of the present case, I am of the considered view that putting condition on the Petitioner not to enter into Delhi and not to contact the Prosecutrix, is not likely to have desired effect for the reason that the parties are closely related to each other (wife of the Petitioner is daughter of maternal aunt of the Petitioner). It is not a case of any love affair between the Prosecutrix and the Petitioner or giving consent under some misconception of fact like promise to marry. It is a case where both the parties knew that the Petitioner was married having his own family. Enough patience was shown by the Prosecutrix by not reporting the matter immediately to her parents and then to the Police, but when under the threat of showing the MMS the Petitioner allegedly tried to sexually assault the Prosecutrix by calling her again and again that she was compelled to report the matter to her mother and then to the Police. The case is at the stage of prosecution evidence and the statements of the Prosecutrix and other material witnesses are yet to be recorded.

27. Merely because the Petitioner is the sole bread earner of the family having roots in the society cannot be the sole ground to release the Petitioner on bail for the reason that the individual liberty is restricted by larger social interest. It is necessary to have an orderly society wherein an individual is expected to live with dignity and due respect for law and others rights.

28. Looking into the nature of crime, the individual liberty of the Petitioner cannot be the pedestal which is likely to bring lawlessness in the society.

29. In view of the aforesaid, I do not find it to be a fit case to exercise discretion in favour of the Petitioner by enlarging him on bail merely because he is in custody since 17.10.2013 or he is sole bread earner of the family.

30. The application is accordingly dismissed.

31. Any observations made hereinabove for the purpose of dealing with the contentions of counsel for the petitioner shall not have any effect on the decision of this case on merits at any stage of the trial. PRATIBHA RANI, J NOVEMBER18 2014 st/dc

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