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SooperKanoon Citation : sooperkanoon.com/949013

Court : Delhi

Decided On : May-08-2012

Judge : V.K. Shali

Appeal No. : BAIL APPN. 977 OF 2011

Appellant : Karan Girotr

Respondent : State and Another

Judgement :

1. This is an application filed by the petitioner, Karan Girotra for the grant of anticipatory bail in respect of FIR No.262/2011 under Sections 376/328 IPC read with Section 66-A of the Information Technology Act registered by PS:Prashant Vihar, Delhi.

2. Briefly stated, the facts of the case are that Shivani Saxena, D/o Sudhir Saxena had lodged a complaint with the Police that she had married to Ishan on 25.9.2009, however, the marriage between them failed within a few days as her husband, Ishan could not consummate the marriage. Both of them started living separately w.e.f. 1.10.2009 and it was amicably settled between them that after the expiry of one year of their marriage, both of them will file a joint petition, on mutual consent, for the grant of divorce, after which both the parties will be free to marry afresh.

3. It is further alleged by her that in the course of chatting on the internet, she had come in contact with one Karan Girotra about six years back from the date of the lodging of the complaint. On 3.4.2010, the petitioner is alleged to have told her that he had fallen in love with her and wants to marry her. On this, she allegedly told him that she is already married, whereupon the petitioner said that he would marry her after her divorce. On 15.5.2010, it is alleged that on the pretext of introducing the complainant to his family members, the petitioner called her to his house, that is, Flat No.11, Rama Krishan Apartment, Sector-IX, Rohini, Delhi where she found that there was nobody except his old bed-ridden maternal grandmother. It is alleged by her that, at about 8:00 P.M., the petitioner gave her soft drink, which was perhaps laced with some intoxicant and on consuming the same, she became unconscious. It is stated that when she regained her consciousness at about 10:00 P.M., she found herself completely nude and she also noticed that she had been sexually assaulted. On noticing this, she started crying and she was consoled by the petitioner that she need not worry, as he would fulfill the commitment of marrying her. On 16.5.2010, she was shocked when she received her obscene pictures of the previous night. She confronted the petitioner with the said pictures, whereupon the petitioner represented to her that she need not worry about this and he is going to marry her. It has also been alleged that the petitioner threatened to circulate the objectionable pictures everywhere if she did not keep on maintaining physical relations with him. On the basis of this blackmail, she alleged that she was raped again on 18.5.2010. Subsequent thereto, on 9.7.2010, it is stated that a roka ceremony was held between the petitioner and the complainant at the restaurant, Pind Baluchi in Pitam Pura, Delhi, where the mother of the complainant gifted the petitioner a santro car, jewellery, clothes and various other gift items. It has been alleged that the petitioner kept on sexually assaulting the complainant without her consent and on 12.9.2010, the petitioner informed the complainant's mother that he is breaking the engagement and he returned the car and the other articles, whereupon the complainant lodged a complaint in the month of June and the aforesaid FIR under Sections 328/376 IPC read with Section 66-A of the I.T. Act was registered by PS: Prashant Vihar, Delhi against the petitioner.

4. During the course of investigation, the Prosecutrix, Shivani Saxena was medically examined from Dr. B.S.A. Hospital on 7.6.2011. The statements of Vivek, her cousin and Madhu Saxena, her mother have also been recorded. A mobile phone with a SIM, which was allegedly used by the petitioner, was stated to have been returned to the Samsung company by the petitioner. Subsequent inquiries made have not been able to yield any fruitful result of the recovery of the mobile phone, but evidence has been gathered that the petitioner had sent two messages from his mobile, the details of which are given in the Forensic Science Laboratory Report (FSL) dated 17.1.2012. It may be pertinent to mention here that the FSL Report, contains the messages purported to have been sent from the phone of the petitioner. This report is prima facie admissible, under Section 293 of the Cr.P.C.

5. I have heard the learned counsel for the petitioner, Mr. Samrat K. Nigam as well as Mr. V.K. Shukla, the learned counsel for the complainant.

6. The learned counsel for the petitioner has punched holes in the Prosecution story of the alleged rape and the blackmail. In this regard, he has stated that when the roka ceremony between the petitioner and the complainant had taken place on 9.7.2010, the fact that the complainant was having a failed marriage in existence with Ishan, was not disclosed to him and it was because of this reason that the marriage ceremony between the two parties was called off. It has also been stated by him that the allegation of the complainant that she was subjected to sexual assault by the petitioner is totally unbelievable and false. As a matter of fact, whatever physical relations were established by the petitioner with the complainant, the same were with her consent and it is only subsequent to the calling off of the roka ceremony/marriage ceremony, and that too belatedly after the expiry of more than six months, wisdom had dawned on her to lodge this false and frivolous allegation of rape. It has also been denied by the petitioner that any photographs of the complainant, in any objectionable manner, were taken or that they were circulated by him either to the complainant or to any other persons, including Ishan.

7. The learned counsel for the petitioner has drawn the attention of the Court to the complaint made by the petitioner to the Police Station (South-West District), whereupon an inquiry was conducted by the Police and they had made certain observations regarding the conduct of the learned counsel, Mr. V.K. Shukla, being allegedly a part of the gang, consisting of the complainant and her mother, who were indulging in such nefarious activities, firstly inducing the innocent persons into establishing a matrimonial alliance with the complainant and thereafter backing out of the same and using the said alliance with the false allegation of having physical relation for the purpose of blackmail. It has also been contended by the learned counsel for the petitioner that the complainant is a girl whose statement cannot be relied upon safely because of her background. This background is that firstly, she got married to Ishan and did not disclose this fact to the petitioner before the 'roka ceremony'. Thereafter, she continued to have physical relations, though allegedly under threat, and later on lodged a report belatedly. Therefore, it was contended that her story cannot be accepted as gospel truth so as to deny anticipatory bail to the petitioner.

8. As against this, the learned counsel for the complainant has vehemently contested the submissions made by the learned counsel for the petitioner. He has contended that it is a case of not only rape, where the consent was obtained by the petitioner under misrepresentation of trying to solemnize the marriage with her, but it also entails investigation of the matter in respect of taking obscene and objectionable pictures of the complainant and thereafter circulating the same. It is this latter part of the allegation which he says needs to be investigated by the Police, as the petitioner had deliberately tried to create hurdles in the investigation of this matter.

9. It has also been stated that the petitioner had wrongly stated that he had surrendered the Mobile to the Samsung company from which the obscene pictures were sent.

10. I have carefully considered the submissions made by the learned counsel and gone through the record, including the Police Inquiry Report.

11. At the outset, it must be submitted that Mr. Samrat Nigam, the learned counsel appearing for the petitioner has very ably argued the matter and tried to make out a very good case for the grant of anticipatory bail by showing that the conduct of the respondent/ complainant herself is not very straight forward and truthful. Three facts are very essential in this regard which have been brought to the notice of the Court. The first is that the complainant had not allegedly disclosed the factum of her previous marriage to the petitioner. Though the case of the complainant is that the factum of marriage was known to the petitioner, but this allegation of the petitioner, being aware of the factum of marriage, is not believable on account of the fact that if this would have been true, then the petitioner would not have gone in for roka ceremony. The second aspect is with regard to the delay in lodging the FIR. The complainant had admittedly lodged the FIR after expiry of more than six months from the last alleged incident and thirdly, that the complainant apparently seems to be a consenting party to the sexual intercourse with the petitioner and it is only when the entire plan of the complainant to get married to the petitioner had fallen apart that she turned around and seemed to have lodged the complaint of rape. But, nevertheless, the allegations against the petitioner and the severity of the charges against him does not get lessened by these facts which are ultimately to be adjudicated at the stage of trial, so far as its correctness is concerned. But there is one more fact which dissuades the Court in extending the benefit of anticipatory bail to the petitioner and this is taking of the nude and obscene photographs of the complainant by the petitioner and then the transmission of the same. Though the petitioner has denied the factum of transmission of these obscene material to any person, much less to the complainant herself and he has taken the plea that the phone, from which the alleged photographs are purported to have been taken, has been surrendered by him to Samsung Company but certain evidence has been gathered by the Investigating Agency which attributes that certain messages have been sent from the phone of the petitioner to the previous husband of the complainant. This part of the allegation would certainly require custodial interrogation. Nobody should be permitted to blackmail a woman by taking her nude photographs. Therefore, this aspect of the matter adds a great deal of twist to the facts of the Prosecution's case and I feel that this fact aggravates the severity of charges against the petitioner which dissuades the

Court to exercise the discretion of grant of anticipatory bail in favour of the petitioner.

12. So far as the other two considerations, namely, the petitioner's fleeing away from the processes of law or not being available to face the trial is concerned, neither any apprehension in this regard has been expressed by the Investigating Agency nor there is any such fact which could be made a basis to assume that the petitioner will flee away from the processes of the law. Therefore, so far as this aspect of the matter is concerned, it can certainly be considered in favour of the petitioner.

13. The last consideration, which normally is taken into consideration while examining the grant of benefit of bail to a party is whether he will tamper with the evidence or not. So far as the question of tampering with the evidence in the instant case is concerned, I feel that the petitioner hardly has an opportunity now to tamper with the evidence, inasmuch as the case has become old and whatever electronic evidence was available, that seems to have been destroyed by the petitioner as he had ample time and opportunity for the same, nevertheless at the same time, the matter is of such a nature which needs interrogation custodial or otherwise of the petitioner as regards the allegation of his having taken the photographs of the complainant and then circulating the same not only to the complainant but also to her previous husband. In this regard, I feel that this consideration goes against the petitioner.

14. The learned counsel for the petitioner has drawn the attention of the Court to the observations made by the Police in the Inquiry Report to show the alleged unholy nexus between the mother, daughter and the counsel, making an allegation that the counsel was trying to blackmail the innocent persons by inducing them into alliance. Certainly, this is a very disparaging remark on the conduct of the counsel. In this regard, I have gone through the Report and I agree with the contention of the learned counsel for the petitioner that the remarks, which have been made by the Police in the Inquiry Report are certainly a serious reflection on the conduct of the learned counsel and it seems that these observations are very pertinent which also need to be inquired into as to whether the learned counsel

who was representing the complainant was remaining within the four walls of the law or was exceeding his limits so as to be a part of something which is not permissible for an Advocate which need not tread on. I do not think that it is for this Court to comment on the conduct of the counsel in this regard except to take the note of the same.

15. It may also be pertinent that the learned counsel for the complainant had referred to a judgment, reported as State of Maharashtra and Anr. -vs- Mohd. Sajid Hussain Mohd. S. Husain and Ors., (2008) 1 SCC 213 wherein the Court had observed that cases involving serious offences, such as one punishable under Section 376, IPC, should be allowed to be fully investigated. I have gone through the said judgment. There is no dispute about the fact that the cases involving serious offences, such as one punishable under Section 376, IPC, deserves to be allowed to be fully investigated. But the facts of the said case were totally different from the facts of the present case, as in the reported case, there was an allegation of the girl being lured into immoral trafficking, while as in the instant case, there is no such allegation, but on the contrary, there are allegations of consensual sex having been indulged into by the petitioner which has subsequently been given the colour of the blackmail and it is only because of the two SMSs which have been brought by the Police on record which have emanated from the phone pertaining to the petitioner, which have persuaded the Court to draw an inference against the petitioner and denying him the benefit of bail.

16. Having regard to the aforesaid facts and the totality of the circumstances, I feel that this is not a fit case where the petitioner deserves to be granted the benefit of anticipatory bail. Accordingly, the interim order dated 20.7.2011, by virtue of which the petitioner was restrained to be arrested by the Investigating Agency is recalled and the petition for the grant of the anticipatory bail is dismissed.

17. Expression of any opinion hereinbefore may not be treated as an expression on the merit of the case.