

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Reserved on: 30th May, 2013*
Date of Decision: 31st May, 2013

+ BAIL APPLN. 704/2013

KUMAR NIKHIL @ SAROJ KUMAR
SHUKLA @ JHUNNU Petitioner
Through: Petitioner in person.
versus

STATE NCT OF DELHI Respondent
Through: Ms. Jasbir Kaur, APP along with SI
Hasrat Ali, CAW Cell, PS New
Ashok Nagar.
Complainant in person with her
counsel.

CORAM:
MR. JUSTICE R.V. EASWAR

JUDGMENT

R.V. EASWAR, J.:

1. This is an application for anticipatory bail filed under section 438 of the Cr.P.C. in case FIR No.351/2012 at P.S. New Ashok Nagar under sections 498A/ 406/ 34 of the IPC.

2. The bail application arises in the following circumstances. The complainant Neelam, daughter of Radha Krishan Mishra, was married to the applicant, who is an advocate by profession on 18.05.2005 in Bihar. Approximately a sum of ₹7,00,000/- is stated to have been spent on the

marriage, in addition to a sum of ₹3,00,000/- said to have been given to the applicant to start life; other dowry articles were also given. After the marriage the complainant came to her matrimonial home where the husband lived with her for hardly 7-8 days. Thereafter he went back to Delhi. He did not visit his house in Hazaribagh and the communication between the complainant and the applicant was only by means of telephone. Since for a period of one and a half years the applicant did not live with the complainant nor did he take her to Delhi, the complainant came to Delhi with her relatives. She came to know on inquiry that the house in Mayur Vihar was hired by the accused only a few days back and prior to that he was residing with a widow by name Sujata Singh, wife of Late Ram Naresh Singh. In fact, according to the FIR, he had been living with her for the past six years in illicit relationship. The FIR further narrates that whenever the complainant came to Delhi, the accused and the lady with whom he was allegedly living in illicit relationship used to threaten her and also employed abusive language. On several occasions, the complainant was beaten by the accused and the lady with whom he was said to be living. This state of affairs, according to the FIR, continued from late 2006 to 2012 and during this period all the attempts made by the complainant and her relatives to bring about a settlement failed. Several such incidents are narrated in the FIR that there are allegations therein against the accused for not returning the *stridhan* property brought by the

complainant and also allegations as to how he would demand money from the complainant. A divorce petition would also appear to have been filed by the accused against the complainant which is said to be pending in the Karkardooma Courts, Delhi. The accused, it is further stated, did not also comply with the order of the Court directing him to provide for the expenses of the complainant. Further, the complainant also preferred an application under section 125 of the Cr.P.C. and despite orders passed by the Court, the maintenance expenses are not being paid to the complainant.

3. Efforts to bring about a settlement appear to have been taken on 05.04.2011 and 28.09.2011 but such efforts went in vain. It is stated that on these days also the accused abused the complainant and the lady with whom he was allegedly having an illicit relationship caused physical injury to the complainant.

4. The FIR further states that on 24.12.2012 there was a meeting of the complainant and the accused and his relatives at the matrimonial home in Hazaribagh but it is stated that the relatives of the accused abused the complainant and drove them away, saying that unless a sum of ₹35,00,000/- was paid to the accused, the complainant will not be allowed to come to the matrimonial home. The *stridhan* property in the form of jewellery was also not returned despite demand being made by the complainant.

5. On 25.03.2012 also the story appears to have been repeated and in fact a threat would seem to have been given to the complainant that she would be killed.

6. In the light of the aforesaid allegations, apprehending arrest, the applicant Kumar Nikhil has filed the present anticipatory bail application.

7. On 29.04.2013 the applicant expressed to this Court his willingness to go for mediation after filing the amended memo of parties. He was permitted to do so. On 06.05.2013 the complainant's counsel appeared before the Court and sought protection from the petitioner, apprehending physical assaults from him to the complainant. This Court ordered that the petitioner will not take any such move which will endanger the security of the complainant. On 24.05.2013 when the bail application was taken up for hearing, the complainant was personally present in Court along with her counsel. The petitioner prayed for a last chance to go for mediation and conceded that the mediation may be directed to take place on that day itself. He also undertook to bear the expenses of the complainant who had come from Bihar for the hearing. This Court directed the parties to appear before the Delhi High Court Mediation Centre on that very day at 3:00 p.m. making it clear that it would be the last opportunity for the petitioner. On 28.05.2013 when the matter was taken up for hearing, the petitioner was not present but the complainant who

was present in Court stated that the mediation was not successful. Accordingly, the matter was relisted on 29.05.2013. On that day the petitioner again requested for one last opportunity for mediation. Accordingly, the matter was directed to be listed on 30.05.2013. On this date the petitioner and the complainant both appeared. A copy of the order of the Delhi High Court Mediation Centre which was produced before me showed that on 27th and 28th May, 2013 no progress could be made because of the lawyers' strike. On 29.05.2013 the petitioner did not appear before the Mediation Centre. This was on the ground that he had to attend a pronouncement matter in Court at 2:15 p.m. It may be added that it was on this ground that the hearing of the bail application was adjourned from 29.05.2013 to 30.05.2013.

8. On 30.05.2013 when the matter was taken up for hearing the applicant first raised the issue of limitation under section 468 of the Cr.P.C. According to him the FIR was hit by the period of limitation prescribed in section 468(2)(c) Cr.P.C., which prescribes a period of 3 years for taking cognizance of the offence. This point was also taken before the Sessions Court. In my opinion, there is no merit in the same since under section 472 of the Cr.P.C., in the case of a continuing offence a fresh period of limitation shall begin to run at every moment of time during which the offence continues. The facts narrated in the FIR show that on every occasion when the applicant and the

complainant along with relatives and family members tried to bring about a settlement it was not successful and the applicant had demanded dowry in the amount of ₹35,00,000/- as a condition for living together as husband and wife. From the FIR it is seen that the last of such attempts took place on 25.03.2012 at 28-A, Pocket C-2, Mayur Vihar, Phase-III, Delhi at about 6:00 p.m. where again all the seven accused mentioned in the FIR, including the present applicant, repeated the demand of ₹35,00,000/- for the applicant and the complainant living together as husband and wife. It is thus clear that there was a demand within the meaning of clause (b) of section 498A on 25.03.2012 and the period of 3 years therefrom would end only on 24.03.2015. The FIR having been registered on 07.11.2012 is therefore well within the period of limitation prescribed by section 468(2)(c) read with section 472 of Cr.P.C. The point of limitation raised by the applicant, who argued his case in person, is rejected.

9. The other arguments advanced by the applicant before me are hollow and without any substance. For instance, he submitted that there was no allegation of an offence under section 498A having been committed. This is belied by the events narrated in the FIR. Even on 25.03.2012, all the seven accused, including the applicant, have been alleged to have demanded a sum of ₹35,00,000/- as condition for the complainant and the applicant living as wife and husband.

10. The learned Additional Public Prosecutor strongly opposed the anticipatory bail application and submitted that there was nothing which prevented the applicant from turning up before the Delhi High Court Mediation Centre on 29.05.2013. She pointed out that conduct of the appellant right from the date of the marriage with the complainant has been improper, to say the least. She strongly relied on the averments in the FIR to show that specific dates, names and addresses, etc. have been mentioned therein making out an offence committed by the applicant under section 498A as also the offence under section 406 of the IPC which speaks of criminal breach of trust. This is an obvious reference to the refusal to return the *stridhan* property of the complainant in the form of jewels, ornaments and cash said to have been given by the parents of the complainant. According to the learned Additional Public Prosecutor, the applicant has not shown any respect for any court proceedings or orders and even for mediation proceedings as can be seen from his refusal to pay maintenance to the complainant despite Court orders and his disinclination to appear before the Delhi High Court Mediation Centre on 29.05.2013 on the flimsy pretext that he has a pronouncement of judgment to attend. My attention was also drawn to the penultimate paragraph of the order of the Sessions Court passed on 23.04.2013 where there is reference to the possibility of the applicant to flee from justice since execution proceedings, warrants of attachment, etc. are

pending against him; though the applicant has stated that he is available at three mentioned addresses, but he has not chosen to appear before the Court of the MM in connection with the aforesaid proceedings. For these reasons, it is submitted that the anticipatory bail application should be dismissed.

11. On a careful consideration of the rival contentions, the FIR and the material placed on record I am not inclined to grant anticipatory bail to the applicant. There is no substance in his argument that the period of limitation for taking cognizance of the offence has expired as I have pointed out earlier. The FIR contains adequate material and a clear allegation against the applicant that he was demanding dowry from the complainant and her parents and thus the offence under section 498A is specifically alleged against the applicant also. The conduct of the applicant, who is an advocate by profession and thus an officer of the Court, has been wholly improper throughout the proceedings. As rightly pointed out by the learned Additional Public Prosecutor, he has not complied with the orders of the Court and has execution proceedings and warrants of attachment pending against him. As alleged in the FIR, he has not complied with the orders of the Court to pay maintenance to the complainant under section 125 of the Cr.P.C. He is stated to be living in illicit relationship with a widow by name Sujata Singh, wife of late Ram Naresh Singh and there is copious reference in the FIR to the fact that she also used to join the applicant in threatening and abusing, including

physical abuse, the complainant. Several attempts to bring about a settlement between the two parties, at the initiative of the complainant's side and in the premises of the accused have all failed due to the persistent unlawful demand of dowry of ₹35,00,000/- from the parents of the complainant. The relevant dates, the place and the names of the persons who were present on the side of the applicant and the fact that they threatened and abused the complainant have all been mentioned in the FIR. In these circumstances I share the apprehension expressed by the learned Additional Public Prosecutor that if the applicant is enlarged on bail, there is every possibility of his fleeing from justice as rightly noted by the Sessions Court. Though the applicant repeatedly assured this Court that he was keen to arrive at a settlement with the complainant, he has not taken any positive or concrete steps before the Delhi High Court Mediation Centre. This Court gave him several opportunities in this direction but all of them appeared to have gone in vain. For the above reasons I decline to grant anticipatory bail to the applicant. The bail application is accordingly rejected.

(R.V. EASWAR)
JUDGE

MAY 31, 2013
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