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Himanshu Kumar v. State Nct Of Delhi , 2022 PLRonline 0595

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HIGH COURT OF DELHI AT NEW DELHI

HON'BLE MR. JUSTICE TALWANT SINGH

HIMANSHU KUMAR Petitioner

versus

STATE NCT OF DELHI Respondent

BAIL APPLN. 929/2022

05.05.2022

Information Technology Act S. 66(E)/67(A) – IPC S. 354 (D) – Instagram – Only allegation against the petitioner is that he had posted on Instagram 4-5 pictures of the petitioner kissing the complainant on her cheek – Both of them were in live-in relationship – The petitioner has been in custody for the last more than two months – Accused/applicant is the first time offender, he is a young man of 30 years, the petitioner and the complainant were in live-in relationship for a long time and the only non-bailable Section invoked against him is Section 67(A) of the Information Technology Act, 2000, which according to the petitioner is not applicable to this case and the fact that more than two months have passed since the date when the accused/applicant had surrendered and the charge sheet has been already filed – Granted regular bail

Through: *Mr. Prashant Mendiratta and Mr. B. Venkatraman, Advocates.*
Through: *Mr. Ravi Nayak, APP for State.*

TALWANT SINGH, J.

1. This is an application for regular bail moved by the petitioner in case FIR No. 0279 dated 03.06.2021, which was registered under Section 354 (D) IPC and Section 66(E)/67(A) of Information Technology Act, 2000 at PS Amar Colony, District South East, New Delhi.

2. The accused had earlier approached the Court of learned Metropolitan Magistrate for his regular bail under Section 437 Cr.P.C., which was dismissed on 16.03.2022 and the learned ASJ had dismissed his regular bail application vide order dated 04.03.2022.

3. Prior to this, the petitioner had filed an anticipatory Bail Application No.3390/2021, which was dismissed on 24.11.2021 by the Court of learned ASJ. He had also moved this Court by filing an anticipatory bail application which was numbered as Bail Application No. 4240/2021. The petitioner withdrew the said application on 02.02.2022 seeking leave to withdraw the said application, then surrender and seek regular bail. Thereafter, the petitioner suffered from Covid and after recovery, he surrendered on 22.02.2022 and since then he is in judicial custody.

4. It has been further submitted by learned counsel appearing on behalf of the petitioner that the facts leading to filing of the present application are that he is 30 years old graduate and has not committed any of the offences as alleged in the FIR. The petitioner and the complainant have known each other since March 2019 as both of them are gamers and they had met on a virtual gaming platform.

5. The petitioner was served with a notice under Section 41A Cr.P.C. on 04.10.2021. The petitioner, in compliance to the said notice, appeared before the police officials on 11.10.2021, and thereafter, he provided all the information sought by the police officials. He had also surrendered his mobile phone as asked by the police officials.

5.1 He had also opened his iCloud account on his mobile phone and showed all the contents to the IO and similarly, the contents on his computer were also shown.

5.2 He had also informed the police officials that his earlier iPhone X had developed some technical problem, so he had sold it off but his Apple ID remains the same.

6. Thereafter, he was asked to appear on 19.11.2021.

7. Later on, he received a call from a police official that he had to appear on 19.10.2021 but he informed that he was already asked to appear on 19.11.2021, so he had made his travel arrangements accordingly. Feeling apprehensive, the petitioner moved an anticipatory bail application, which came up for hearing on 20.11.2021 before the learned ASJ, which was adjourned to 24.11.2021 and interim protection was granted. The petitioner appeared before the IO on 20.11.2021 to join investigation.

8. The petitioner has been accused of having committed offences under Section 354(D) of IPC and Section 66(E) of the Information Technology Act, 2000, which are bailable offences and only non-bailable offence alleged against him is under Section 67(A) of the Information Technology Act, 2000. As per the petitioner, the said Section is not attracted to the facts of the case.

9. The petitioner surrendered on 22.02.2022, and thereafter, he is still in custody.

10. Notice was issued to the State. Status report was filed.

11. Learned counsel for the petitioner has reiterated the facts mentioned herein above. He has further submitted that the only allegation against the petitioner is that he had posted on Instagram 4-5 pictures of the petitioner kissing the complainant on her cheek. Both of

them were in live-in relationship. The petitioner has been in custody for the last more than two months.

12. Charge sheet stands filed and the trial of the matter will take a long time and the petitioner is ready to comply with any conditions to be imposed by this Court.

13. On the other hand, learned APP has relied upon the status report and has reiterated the grounds of the opposition mentioned in the status report. The said grounds are reproduced here under:

"GROUND OF OPPOSING BAIL ON BEHALF OF THE STATE

1. The allegations are serious in nature.

2. Investigation is still pending.

3 The request for obtaining voice sample of the accused has been sent to FSL Rohini and voice is to be matched from the voice messages provided by the complainant. The date is fixed for 10/06/2022.

4. The conduct of the accused has made complainant feel unsafe.

5. The accused has deleted Instagram accounts used to publish and defame the complainant. The threatening mails have also been deleted by the accused from his gmail accounts.

6. The mobile phone used in commission of crime is disposed of the complainant after registration of case.

7. Ample apprehension that accused might threaten the victim and tamper with the evidences.

8. Accused may evade the process of the court.

9. The iCloud accounts are yet to be retrieved. The accused has already deleted several Instagram accounts, gmail account etc.

10. There are irrefutable grounds that accused has involved in present case."

14. After hearing both the sides, it is clear that the petitioner is a first-time offender. The only non-bailable section invoked against the petitioner is Section 67(A) of the Information Technology Act, 2000, which is reproduced here under:

"67A Punishment for publishing or transmitting of material containing sexually explicit act, etc., in electronic form. –

Whoever publishes or transmits or causes to be published or transmitted in the electronic form any material which contains sexually explicit act or conduct shall be punished on first

conviction with imprisonment of either description for a term which may extend to five years and with fine which may extend to ten lakh rupees and in the event of second or subsequent conviction with imprisonment of either description for a term which may extend to seven years and also with fine which may extend to ten lakh rupees."

15. The charge sheet stands filed.

16. Keeping in view the pendency of the large number of cases in the Trial Courts, the present case will take a long time to reach its final conclusion.

17. The main grounds of opposition is that the allegations are serious in nature. The only non-bailable Section invoked is Section 67(A) of the Information Technology Act, 2000 which provides punishment for five years with fine.

18. As far as the ground regarding obtaining the voice sample of the petitioner is concerned, the date for taking the voice sample is fixed by FSL on 10.06.2022. The applicant/accused has to appear at FSL, Rohini on the said date and provide his voice samples and this can be made as one of the conditions for grant of bail.

19. The next ground of opposition is that conduct of the accused has made the complainant feel unsafe. The accused and the complainant are not living in the same locality and as far as the virtual threats are concerned, conditions can be imposed to ward off such threats.

20. As far as the grounds of opposition in paragraphs 5 and 6 are concerned, the charge sheet has been already filed after completion of the investigation. The apprehension expressed by the State that the accused may threaten the victim and tamper with the evidence, this Court can impose conditions for grant of bail and in case the accused violates any of the conditions, the State as well as the complainant are at liberty to approach this Court for cancellation of the bail. The apprehension that the accused may evade the process of the Court is not based on any cogent evidence.

21. As far as grounds 9 and 10 are concerned, the prosecution has already completed the investigation and they have to prove the allegations against the petitioner during trial.

22. Keeping all the above facts and circumstances in view and especially that the accused/applicant is the first time offender, he is a young man of 30 years, the petitioner and the complainant were in live-in relationship for a long time and the only non-bailable Section invoked against him is Section 67(A) of the Information Technology Act, 2000, which according to the petitioner is not applicable to this case and the fact that more than two months have passed since the date when the accused/applicant had surrendered and the charge sheet has been already filed, I am inclined to grant regular bail to the accused/applicant on the following conditions:

(i) The accused/applicant shall not contact or try to contact the victim/complainant, either physically or virtually or through any other person with a view to threaten or intimidate the complainant in any manner whatsoever.

- (ii) The accused/applicant shall not in any way tamper with the electronic evidence in the present case.
- (iii) The accused/applicant shall appear before the concerned expert of FSL on 10.06.2022 to give his voice samples.
- (iv) The accused/applicant shall not in any way circulate any defamatory/objectionable material against the present complainant on any platform during the pendency of the trial.
- (v) The accused/applicant shall not leave the country without the permission from the learned Trial Court.
- (vi) The accused/applicant shall appear before the Court on each and every date when his matter is listed.

23. Subject to the above conditions, the petitioner/accused be released on execution of personal bond of Rs. 25,000/- with a surety of the like amount to the satisfaction of the learned Trial Court.

24. The application is accordingly allowed.

25. Let a copy of this order be sent to the concerned Court as well as to the accused/applicant through the Jail Superintendent for information and compliance.