

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

% *Date of Judgment :22.09.2015*

+ CRL.M.C. 389/2014
SAPNA GAUTAM

..... Petitioner

Through Mr. Gaurav Mitra, Mr. Dhruv
Kapur, Ms. Deepali Dwivedi and
Mr. Siddharth, Advs.

Versus

STATE OF NCT OF DELHI & ANR.

..... Respondents

Through Ms. Kusum Dhalla, APP for the
State along with ACP Yashodara
Rawat and SI Ram Avtar.

+ CRL.M.C. 1139/2014 & Crl. M.A. No.3805/2014
SAPNA GAUTAM

..... Petitioner

Through Mr. Gaurav Mitra, Mr. Dhruv
Kapur, Ms. Deepali Dwivedi and
Mr. Siddharth, Advs.

Versus

STATE OF NCT OF DELHI & OTHERS

..... Respondents

Through Ms. Kusum Dhalla, APP for the
State along with ACP Yashodara
Rawat and SI Ram Avtar.
Mr. Atul Guleria, Adv for R-4.

+ CRL.REV.P. 336/2014 & CrI. M.A. Nos.9055/2014 &
16836/2014
AKASH NANGIA & ANR

..... Petitioners

Through Mr. H.S. Phoolka, Sr. Adv. with
Mr. Manjeet Singh Ahluwalia and
Ms. Shilpa Dewan, Advs. for
petitioner No.1.
Mr. Atul Guleria, Adv for
petitioner No.2.

versus

THE STATE GOVT OF NCT OF DELHI

..... Respondent

Through Ms. Kusum Dhalla, APP for the
State along with ACP Yashodara
Rawat and SI Ram Avtar.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J. (Oral)

1 These are three petitions in which Sapna Gautam is the petitioner in the first two petitions. The third petition is revision petition filed by Akash Nangia and Sameer Dhingra impugning the order dated 14.03.2014 wherein the charge under Section 354 of the IPC has been framed against them.

2 In the first petition (CrI. M.C. No.389/2014), the petitioner is aggrieved by the bail order dated 28.05.2013 wherein anticipatory protection has been granted to respondent Rajeev Chauhan. Submission

being that this bail had been granted to the respondent on a wrong premise and on incorrect factual submissions. The order of grant of bail is thus liable to be set aside. To support this submission, learned counsel for the petitioner has placed reliance upon a judgment of the Apex Court in (2012) 12 SCC 180 Kanwar Singh Meena Vs. State of Rajasthan and Another as also another judgment reported as (2008) 13 SCC 584 Narendra K. Amin (Dr.) Vs. State of Gujarat and Another. Submission being that there are wide powers with the Court to order cancellation of bail if there has been a miscarriage of justice. This is one such case.

3 The second petition (Crl. M.C. No.1139/2014) has been filed by Sapna Gautam seeking re-investigation in the present FIR i.e. FIR No. 27/2013. Submission being that the investigation has not been carried out fairly. Attention has been drawn to a vigilance report dated 05.08.2013 (which was submitted by the ACP duly approved) wherein certain investigations carried out by the CAW Cell (through Inspector Shashi) were necessarily to be ignored as Inspector Shashi was no longer vested with the inquiry and the inquiry having stood transferred to the local police station Hazrat Nizammuddin on 14.12.2012, the report dated 07.02.2013 alleged to have been prepared by Inspector

Shashi (of the CAW Cell) could not have been used as a piece of evidence (as relied upon by the Trial Judge) neither for the purpose of grant of bail nor for the purposes of investigation. Attention has been drawn to the charge-sheet. Submission being that in the charge-sheet, the accused persons have been exonerated almost completely and this is for the reason that the subsequent Investigating Officer (police station at Hazrat Nizammuddin) namely Inspector Yashdhra Rawat was also following the tune of Inspector Shashi inspite of the Vigilance Enquiry report (dated 05.08.2013) having noted the fact that Inspector Shashi could not have carried out any investigation, in the matter yet the subsequent Investigating Officer namely Yashodhra Rawat also had relied upon this report of Inspector Shashi and has thus committed a fault in the investigation; the bias qua the petitioner is writ large; all this has been done at the behest of the accused. This is a fit case where the petitioner having suffered a grave prejudice is entitled to a re-investigation and a fresh charge-sheet should be directed to be filed. To support this submission reliance has been placed upon (2013) 5 SCC 762 Vinay Tyagi Vs. Irshad Ali @ Deepak and others as also another judgment of the Apex Court reported as (2011) 3 SCC (Crl) 666 State of

Punjab Vs. Central Bureau of Investigation and Others. Submission being that in cases where there has been a foul play and the investigation is unfair and tainted, a fresh denovo investigation should be ordered.

4 Needless to state that these arguments have been refuted.

5 Learned counsel appearing for respondent Rajeev Chauhav submits that the order of grant of bail to the petitioner does not suffers from any infirmity; the charge-sheet has also been filed on a fair investigation carried out by the investigating agency and also suffers from no illegality; charges have also been framed. The prayers made in these two petitions (Crl. M.C. Nos.389/2014 and 1139/2014) are liable to be rejected.

6 In the third petition, arguments have been addressed by Mr. H.S. Phoolka, Sr. Advocate. His submission is that the order dated 14.03.2014 directing framing of charge against Akash Nangia and Sameer Dhingra suffers from an infirmity; attention has been drawn to the complaint pursuant to which the present FIR has been registered. This complaint is dated 06.12.2012. Submission being that the complaint nowhere discloses the time, place and the date of the incident; it is just a general averment which has been made against the aforementioned

two petitioners and the ingredients of the complaint minus any details do not make out any case against the petitioner; they have been falsely roped in; the petitioners had business dealings with the complainant and this is an admitted fact; the complainant only to extort money from the petitioners has lodged this false complaint against them.

7 Learned counsel for the complainant has refuted these submissions.

8 Arguments have been heard. Record has been perused.

9 The present FIR No. 27/2013 has been registered against the three persons namely Rajeev Chauhan, Akash Nangia and Sameer Dhingra. Record discloses that the complainant was known to Rajeev Chauhan since 2009 and in fact had a live-in relationship with him. Her complaint was that she had agreed to have physical relationship with Rajeev Chauhan as he had promised to marry her; at that point of time, she did not know that Rajeev Chauhan was a married man having kids; relationship had been entered into between the parties only on the false promise of marriage. Allegations of rape qua the petitioner Rajeev Chauhan had been leveled by the complainant in her complaint dated 06.12.2012. Her statement was recorded under Section 161 of the Cr.PC

on four different occasions i.e. 29.01.2013, 30.01.2013, 07.02.2013 and 14.02.2013. There is no statement of the victim under Section 164 of the Cr.PC. Charge-sheet was filed on 20.07.2013. Record shows that initial complaint had been lodged by the victim sometime in December, 2012 before the CAW Cell. The Investigating Officer in CAW Cell was Inspector Shashi. The CAW Cell had thereafter filed a closure report. Matter was thereafter transferred to the local police station i.e. police station Hazrat Nizammuddin. Inspector Shashi had noted that she has no jurisdiction to investigate the matter. Vehement submission of the learned counsel for the complainant is that inspite of this fact being known to Inspector Shashi, she had filed a report dated 07.02.2013 investigating into the alleged complaints qua the complainant and this was at the behest of the accused; this report was heavily relied upon by the Trial Judge at the time of grant of bail to Rajeev Chauhan.

10 Attention has been drawn to the order dated 28.05.2013 vide which the bail had been granted to the petitioner. Thereafter, an application had been filed by the complainant seeking cancellation of the which had been disposed of on 13.11.2013; the Sessions Judge was of the view that there is no ground for cancellation of the bail.

11 This Court had noted the contents of the bail order dated 28.05.2013. The contents of the complaint of the complainant dated (06.12.2012) disclose that the complainant had business dealing with Rajeev Chauhan, Akash Nangia and Sameer Dhingra. She was running a business of Document and Data Digitization under the name and style of M/s ACME Data Solutions. She had come in contact with Rajeev Chauhan in this context. This was sometime in November, 2009. He had assured help to her. She had entered into physical relationship as he has promised to marry her; he had represented himself to be a divorcee; however it was later on known that he is not a divorcee and he was a married man. Admittedly she was in a live-in relationship with the accused Rajeev Chauhan.

12 In the course of these proceedings, there were two documents which have been filed by accused Rajeev Chauhan. The first was the affidavit dated 07.03.2013 alleged to have been given by the prosecutrix where she had stated that she does not wish to pursue this case. This document had been given to the Investigating Officer to get it verified. It had been verified that the document/affidavit had been signed by the complainant wherein she had admitted that she did not wish to pursue

these proceedings. Her submission before the Trial Judge and even before this Court is that this document had been signed under pressure. She had signed this document on 11.03.2013 on the pretext that the proceedings in FIR No. 30/2012 (registered under Sections 420/406 of the IPC by the EOW against the complainant at Chandigarh) would be settled and for this purpose she had agreed to sign this petition. This document was noted by the Trial Judge.

13 The second document which had been filed by the accused before the Trial Judge was a report dated 07.02.2013 purported to have been given by Inspector Shashi wherein certain investigations purported to have been carried out by Inspector Shashi (even after she was no longer the Investigating Officer) had been filed. This Court notes that this document had been filed by the accused but no reliance has been placed on this document by the Trial Judge at the time of grant of bail to the respondent.

14 The factual matrix of the case has been noted. It has been noted that the parties are adults and the prosecutrix was in fact 32 years of age at that point of time. She had business dealings with Rajeev Chauhan; her contention that she had entered physical relationship with Rajeev

Chauhan only on the false pretext of marriage has also been noted. It has also been noted that parties were known to one another since November, 2009. The Trial Judge had also noted the affidavit dated 07.03.2013 wherein the complainant had stated that she does not wish to pursue her case. Although the report of Inspector Shashi dated 07.02.2013 had also been filed by the accused but at the cost of repetition, this report was not taken into account by the Trial Judge for the grant of bail.

15 The Trial Judge had passed a reasoned order. It was a fair discretion which has been exercised by him in favour of the accused noting the factual matrix as narrated above. There is nothing wrong in this order. The submission of the complainant that the bail had been granted on a misconception of fact and was wholly based on the report dated 07.02.2013 which was an illegal investigation does not hold good as this was not the ground on which the bail had been granted to the respondent. The order suffers from no infirmity. This Court is not inclined to interfere with the order.

16 This Court also notes that the parameters of grant of bail and parameters of cancellation of bail are distinct. In the former case, the ambit is wider; in the latter, the ambit is narrower and to cancel a bail it

has to be for exceptional reason. It is also not the case of the complainant before this Court that after the grant of bail by the Trial Judge to Rajeev Chauhan (28.05.2013), there has been any misuse of the process of the Court or the complainant has been threatened or that she has suffered any coercion at the hands of Rajeev Chauhan. It is also not her case that he is trying to influence her or any other person.

17 In this background, this Court is of the considered view that the order dated 28.05.2013 suffers from no infirmity. The bail cannot be cancelled. The first petition i.e. Crl. M.C. No. 389/2014 is accordingly dismissed.

18 The second petition i.e. Crl. M.C. No. 1139/2014 seeks a prayer that reinvestigation should be ordered in the present offence as the investigation has not been carried out fairly and as noted supra, the vigilance report dated 05.08.2013 has been largely relied upon by the complainant. The vigilance report dated 05.08.2013 has been perused. It notes that a complaint had been made by the complainant in the CAW Cell on 06.12.2012. Inspector Shashi has been assigned the investigation of the case. Thereafter a closure report had been filed and the matter was transferred to the local police station at Hazrat Nizammuddin. Inspector

Yashodhara Rawat was the concerned Investigating Officer. A report had been prepared by Inspector Shashi in CAW Cell on 07.02.2013 but this report has neither been circulated to any person nor was used by Inspector Shashi. A copy of this report had been obtained by the respondent (Rajeev Chauhan) and he had filed it along with his bail application but as noted earlier, this report was not the premise on which the bail had been granted to the respondent on 28.05.2013.

19 The charge-sheet which has been filed has detailed the allegations against all the three petitioners. Apart from the statements of the victim which has been recorded on four different dates i.e. 29.01.2013, 30.01.2013, 07.02.2013 & 14.02.2013, the call detail records exchanged between the victim and the accused have also been detailed. Location of the mobile phone of the three accused persons has also been investigated upon. The charge-sheet clearly specifies that there are strong allegation against Rajeev Chauhan under Section 376 of the IPC and allegation of molestation against the two accused namely Akash Nangia and Sameer Dhingra which make out a prima-facie case under Section 354 of the IPC. This Court also notes that after the filing of the charge-sheet, charges have also been framed; Rajeev Chauhan has been charged under

Section 376 of the IPC and Akash Nangia and Sameer Dhingra have been charged under Section 354 of the IPC. In this charge-sheet there is also no mention of any report dated 07.02.2013.

20 The investigation in this background suffers from no infirmity. This is clearly not a case where the petitioner has suffered prejudice; leave alone grave prejudice for which she is seeking reinvestigation. The judgment of Vinay Tyagi (supra) in fact notes that it is only in the rarest of rare cases alone that a reinvestigation can be ordered. This is definitely not one such case. The prayer made in the second petition seeking reinvestigation is also declined.

21 This Court notes that both these petitions i.e. CrI. M.C. No.389/2014 and 1139/2014 are an abuse of the process of the Court and a wastage of its precious time. Each of these petitions is dismissed with costs quantified at Rs.20,000/- each.

22 In the third petition, the petitioners are aggrieved by the order dated 14.03.2014 vide which charge has been framed against the two petitioners namely Akash Nangia and Sameer Dhingra. The contents of the complaint dated 06.12.2012 have been perused. Her subsequent statements recorded under Section 161 of the Cr.PC dated 29.01.2013,

30.01.2013, 07.02.2013 and 14.02.2013 have also been perused. In her first complaint dated 06.12.2012, she had stated that Akash Nangi is the co-owner of SISL Infotech Pvt. Ltd., Head Office, Chandigarh; Sameer Dhingra is the CEO of Netspider India Pvt. based in Mumbai. Rajeev Chauhan had convinced her that she could be empanelled in the companies of both Akash Nangia and Sameer Dhingra. The complainant had shifted to Lajpat Nagar. After sometime, Akash Nangia and Sameer Dhingra started visiting her on the pretext of business. One day Akash Nangia and Sameer Dhingra came to her house in the absence of Rajeev Chauhan and by their gestures, they did some mis-acts; they humiliated her. They stated that if she could have relationship with Rajeev who is a married man having a child why she could not have relationship with them; Akash Nangia was unmarried; they told her that they have seen her recorded CD with Rajeev Chauhan where she was getting physically intimate with him. These are the allegations in her complaint dated 06.12.2012 and her statement dated 29.01.2013. In her subsequent statements, there is mention of the aforementioned two petitioners. A perusal of this complaint and ingredients of the same clearly persuades this Court to hold that the ingredient of offence under Section 354 of the IPC

(which is the charge framed against the petitioners) is not made out.

23 Section 354 of the IPC reads herein as under:-

“354. Assault or criminal force to woman with intent to outrage her modesty.—Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.”

24 There is no gain saying to the settled proposition that unless and until there is specific and a prima-facie case made out against the persons who are sought to be charged, the charge may not be framed. Vice-versa this Court also notes that it is only on a grave suspicion which has to be noted by the Court to arrive at this finding before framing of charge.

25 The background of the case, as noted above, clearly shows that the victim knew Rajeev Chauhan since November, 2009 and in the course of her business dealings with him, she also met the aforementioned two petitioners namely Akash Nangia and Sameer Dhingra, both of whom were holding position of authority in their respective fields; Akash Nangia was based in Chandigarh and Sameer Dhingra was based in Mumbai. Her allegation is that they had sometime when she had

shifted to Delhi (date, month and year not disclosed) visited her and thereafter some indecent gestures were made by them. They had told her to have relationship with them. Akash Nangia told her that he is not married and if she could have relationship with a married man then why she could not have relationship with them. In the absence of any date, time, month or year, the investigating agency had relied upon the month of September, as the allegations in the complaint had disclosed that it was in the month of September, 2012 that Rajeev Chauhan was out of station. It was probably at that time that the aforementioned persons namely Akash Nangia and Sameer Dhingra had visited her house in Lajpat Nagar. The call detail records of September, 2012 has been verified. The investigating agency had noted that during this period of time, Sameer Dhingra was in Mumbai and Akash Nangia was not in Delhi for the entire month of September, 2012.

26 Even as per the investigating agency, this incident had probably occurred in September, 2012. The complaint was lodged in the police station on 06.12.2012 which was in the CAW Cell wherein a closure report has been filed and thereafter transferred to the local police station at Hazrat Nazammuddin wherein for the first time the statement of the

victim was recorded on 29.01.2013. The allegations qua the aforementioned petitioners have already been discussed supra. These allegations, as disclosed above, which relate to an incident which may have taken place in the month of September, 2012 without any time, date, month or year and the complaint having been lodged in December, 2012 without any specific allegation, this Court is of the view that a prima-facie case of framing of charge is not made out against the present petitioners. The definition of assault and criminal force which are ingredients of offence under Section 354 of the IPC are defined in Sections 351 and 350 of the IPC. The ingredient “outrage her modesty” has not been described in the IPC. This Court is however of the considered view that the general and bald allegations made by the complainant in a complaint relating to an offence which has probably occurred more than 2-3 months earlier (dates not known) and the statement that some misact has been done by the petitioners by gestures which amounted to a humiliation, would not by itself make out a prima facie case under Section 354 of the IPC for which the accused persons have been charged. This Court again notes that the investigating agency had noted that in this month of September, 2012, Sameer Dhingra was in Mumbai and Akash Nangia was

out of country.

27 In (2013) 3 SCC 330 Rajiv Thapar and Others Vs. Madan Lal Kapoor, the Apex Court has noted that the allegations leveled by the complainant far from being sound appears to be almost non-existent; there was no reason why any specification has not been given. On general allegations, charge cannot be framed. Criminal jurisprudence is firm. A man is presumed to be innocent unless proven guilty. A person is also not to be asked to face trial and suffer not only the humiliation of a long protracted litigation but also cannot be asked to suffer the pressure of an exercise which on the factual matrix, as narrated above, would be an exercise in futility as the allegations in the complaint taken as a whole would not be sufficient to uphold the impugned order.

28 The third petition i.e. CRL.REV.P. 336/2014 is allowed. The order dated 14.03.2014 is set aside. The petitioners are discharged.

29 Petitions disposed of in the above terms.

INDERMEET KAUR, J

SEPTEMBER 22, 2015

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