

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.M.C.1299/2021**

Date of decision: 25th June, 2021

IN THE MATTER OF:

SUBHASH

..... Petitioner

Through Mr. Hemant Choudhary, Advocate

versus

STATE (NCT OF DELHI)

...Respondent

Through Ms. Meenakshi Chauhan, APP for the
State with SI Sadhna, PS Anand
Parbat

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

SUBRAMONIUM PRASAD, J.

1. This is a petition under Section 482 CrPC challenging the order dated 24.11.2020, 26.03.2021 and 20.04.2021 passed by learned Additional Sessions Judge, Tis Hazari Court in FIR No. 305/2020.
2. A complaint was registered by the prosecutrix on 18.10.2020 stating that the on 17.10.2020 at about 4:45-6:00 p.m. when the prosecutrix, her parents, her sister were repairing the door of her house, the petitioner along with his wife, son and daughter-in-law misbehaved with her. It is stated that the petitioner pulled her clothes and touched her stomach and his son/Rohit gave an elbow blow on her breast and pelted stones on her house.
3. On the said complaint, FIR No. 305/2020 dated 18.10.2020 registered

at Police Station Anand Parbat for offences under Section 323, 354, 354B, 506, 509 and 34 IPC read with Section 10 and 12 of the POCSO Act.

4. A cross FIR bearing No.306/2020 was registered by the daughter-in-law of the petitioner under Section 323, 341, 354, 506, 509 and 34 IPC against seven persons including complainant and her parents. On a further statement by the daughter-in-law of the petitioner Section 376 IPC was added. Charge sheet has been filed in that case and the case is listed on 14.07.2021.

5. Material on record shows that during the course of the investigation in FIR No.305/2020 dated 18.10.2020 registered at Police Station Anand Parbat for offences under Section 323, 354, 354B, 506, 509 and 34 IPC read with Section 10 and 12 of the POCSO Act the statement of the prosecutrix was recorded under Section 164 CrPC wherein she has reiterated her statements.

6. The petitioner filed an application seeking regular bail which came up for hearing before the learned Additional Sessions Judge on 24.11.2020. The learned Additional Sessions Judge granted bail to the petitioner while imposing certain conditions. One of the conditions which was imposed on the petitioner was that the petitioner shall stay at a distance of 25 kms. from the house prosecutrix for the time being till further orders. The said clause reads as under:-

"2. He shall stay away at least a distance of 25 KM from the residence of the prosecutrix for the time being till further orders."

7. The petitioner thereafter moved an application for modification of the condition imposed in the order dated 24.11.2020 directing the petitioner to stay at a distance of 25 kms. from the house of the prosecutrix stating that

the petitioner had suffered heart attack and was admitted to Sir Ganga Ram Hospital on 20.01.2021. A stent was attached in his heart and he was discharged on 22.01.2021. It is stated that the petitioner is in dire need to stay at home so that he can be given proper care and treatment by his family. Notice was issued to the prosecutrix. The prosecutrix stated that the petitioner has already violated the condition imposed on him as he had visited his house.

8. Considering the fact that the petitioner had undergone a surgery, the learned Trial Court by order dated 25.01.2021 relaxed the condition of staying 25 kms. from the house of the prosecutrix and permitted the petitioner to stay in his house for a period of one month. The petitioner moved another application on 23.02.2021 for extension of the order dated 25.01.2021 for at least one more month. Status Report was called for and the order dated 25.01.2021 was extended by one more month by order dated 24.02.2021.

9. On 23.03.2021, the petitioner moved third application for modification of order dated 24.11.2020 granting bail stating that he may be permitted to reside in his house and the relaxation be extended by one more month. Medical documents were called for. Considering the improvement in health of the petitioner, the order dated 24.11.2020 directing the petitioner to stay 25 kms. away from the house of the prosecutrix was modified by order dated 26.03.2021 and the petitioner was directed to stay at a distance of 10 kms. from the house of the prosecutrix.

10. Within a period of one month of the said order, an application dated 19.04.2021 had been moved for further modification of the order dated 26.03.2021 by which the learned Additional Sessions Judge relaxed the

condition and directed the petitioner to stay 10 kms. away from the house of the prosecutrix for post-surgery care. It is contended that the petitioner was unable to get a suitable accommodation during the COVID-19 pandemic. It was contended that no hotel is available and relatives are not permitting him to stay in their house. The learned Additional Sessions Judge by order dated 20.04.2021, dismissed the said application. This order stands challenged in the present petition.

11. Status Report was called for. In the Status Report it is observed as under:-

"That feeling aggrieved of the orders dated 24.11.2020 and 26.03.2021 passed by the ld. ASJ, petitioner has filed the instant petition seeking modification of the aforesaid orders on the ground that he is suffering from heart problem and needs care of his family members. In this regard it is respectfully submitted that the condition to stay at distance from the house of the complainant was imposed on the petitioner, keeping in view the previous enmity between the parties and registration of cross cases by both the parties against each other. It is further respectfully submitted that in case the petitioner is allowed to stay at his house, there is a grave apprehension that parties may again indulge in quarrel. Presently the case is pending before the concerned court and the next date fixed is 15.07.2021 and yet to be frame the charge against accused persons."

12. Mr.Hemant Choudhary, learned counsel for the petitioner has contended that in view of the COVID-19 pandemic, the petitioner has not been able to get any place to stay. He states that the petitioner is a heart patient and his health condition is not satisfactory. He needs some extra care of him and that can be possible only at his house.

13. Heard Mr. Hemant Choudhary, learned counsel for the petitioner and Ms. Meenakshi Chauhan, learned APP for the State and perused the material

on record.

14. The bail was given to the petitioner by an order dated 24.11.2020. One of the conditions imposed by learned Additional Sessions Judge while granting bail was that the petitioner shall stay at least 25 kms. away from the house of the prosecutrix till further orders. The petitioner filed an application on 16.01.2021 stating that he had heart attack and stent was attached in his heart. Considering the health condition, the learned Additional Sessions Judge relaxed the condition and permitted the petitioner to stay in his house by order dated 25.01.2021. The relaxation was extended by one more month by order dated 24.02.2021. Another application had been filed for further extension. The learned Trial Court after considering all the facts and circumstances has relaxed the conditions and reduced the distance of 25 kms. to 10 kms. and directed the petitioner to stay at a distance of 10 kms. from the house of the prosecutrix.

15. On a perusal of the facts of the case, it cannot be said that the orders passed by the learned Trial Court is without considering the relevant factors. The Court cannot brush aside the statement by the prosecutrix made under Section 164 CrPC stating that the petitioner has threatened her and her family. In the Status Report also, the SHO Police Station Anand Parbat has opined that if the petitioner stays in his house, the parties may again quarrel with each other. Once the learned Additional Sessions Judge has exercised his discretion, it is not for the High Court to substitute its own conclusion to one arrived at by the learned Additional Sessions Judge. This Court is not an Appellate Court. Unless the finding of the court below whose decision is sought to be challenged either in the revisional jurisdiction or under Section 482 CrPC is shown to be perverse or untenable in law or is grossly

erroneous or glaringly unreasonable or where the decision is based on no material or where material facts are wholly ignored or where the judicial discretion is exercised arbitrarily or capriciously, the High Court would not interfere with its decision exercising its jurisdiction under Section 482 CrPC (refer Sanjaysingh Ramrao Chavan v. Dattatray Gulabrao Phalke & Ors reported as **(2015) 3 SCC 123** and Bir Singh v. Mukesh Kumar reported as **(2019) 4 SCC 197**).

16. It is well settled that in exercising its jurisdiction under Section 482 CrPC, the High Court does not in absence of perversity upset the judgement of the courts below. The judgment of the learned Additional Sessions Judge impugned in the present petition cannot be said to be perverse. The learned Additional Sessions Judge has relaxed the condition on three occasions. The condition that the petitioner be directed to stay away from the place of residence of the petitioner has been modified and the distance has been reduced from 25 kms. to 10 kms. The petitioner is not justified in repeatedly approaching the courts for modifying the conditions.

17. The repeated attempts on the part of the petitioner is nothing but an abuse of the process of law. However, this should not be taken as a total prohibition on the part of the petitioner to approach the courts for relaxation of conditions if there is a material change in circumstance.

18. In view of the above, present petition under Section 482 CrPC is dismissed.

SUBRAMONIUM PRASAD, J.

JUNE 25, 2021

hsk