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

Judgment delivered on: 07.04.2022

+ **BAIL APPLN. 3243/2019 & CrI. M.A. No.43735/2019**

SHIVAM SONI

..... Petitioner

Through : Mr. Himanshu Kaushik, Advocate.

versus

STATE(GNCTD)

..... Respondent

Through: Ms. Rajni Gupta, APP for State with
W/SI Garima Bhatia, P.S. Mukherjee
Nagar.

Complainant with her counsel Ms.
Richa Dhawan, Advocate.

**CORAM:
HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA**

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J U D G M E N T

ANOOP KUMAR MENDIRATTA, J. (ORAL)

1. This is an application filed under Section 438 read with Section 482 of Cr.P.C. seeking anticipatory bail in FIR No.635/2019 registered under Section 376 of IPC at Police Station Mukherjee Nagar.

2. In brief, as per the case of the prosecution, on 23.04.2019 WSI Anita received DD No. 28-A and the complainant/prosecutrix aged about 22 years narrated her about the incident of sexual assault by the accused/petitioner.

The statement of the complainant/prosecutrix was recorded after due counseling. As per allegations, both complainant/prosecutrix and accused/petitioner are blind and they developed good relationship/friendship in 2018. The petitioner used to say that he wanted to be complainant's better half. The petitioner got job in State Bank of India in 2019 and in March, 2019 he hired a rented accommodation in GTB Nagar. On 19.04.2019, the petitioner called the complainant/prosecutrix at his rented accommodation and asked her to stay as he was not feeling well and thereafter tried to forcefully indulge and have sex with her. The complainant/prosecutrix denied for the same. Thereafter on 24.04.2019, accused/petitioner put sindoor on her head and established physical relations in the rented accommodation on the assurance of solemnizing marriage.

3. The application has been opposed by the learned APP for the State as well as the legal aid counsel representing the complainant/prosecutrix.

4. I have heard the Ld. Counsel for the petitioner, ld. APP for state and counsel representing prosecutrix.

The petitioner is on interim protection granted vide order dated 03.01.2020 by this Court. Thereafter, the charge-sheet has already been filed before the learned Trial Court and is pending for consideration of charge. The pertinent fact which needs to be noticed and requires a special consideration is that both the petitioner as well as the complainant/prosecutrix are differently abled (i.e. blind).

5. The incident in this case allegedly took place on 24.04.2019 but the

complaint has only been made on 23.12.2019 after a gap of about 8 months. A call alleged to have been made on behalf of the accused/petitioner for influencing the complainant/prosecutrix was not found to be correct on investigation, as stated by the learned APP for the State on instructions. The petitioner has already joined the investigation and is not required for purpose of custodial interrogation or recovery. No purpose would be served by incarcerating the accused/petitioner, at this stage, considering the fact that the petitioner is also differently abled.

6. Considering the totality of facts and circumstances, in the event of arrest, the accused/petitioner be released on bail, subject to his furnishing a personal bond of the sum of Rs.25,000/- (Rupees Twenty Five Thousand only) with one surety in the like amount to the satisfaction of the Investigating Officer/SHO concerned/Ld trial court and subject to the condition that the accused/petitioner shall not communicate with, or come into contact with the victim by any mode whatsoever and the prosecution witnesses, or any member of the victim's family, or tamper with the evidence of the case.

Nothing stated hereinabove shall tantamount to the expression of opinion on the merits of the case.

7. At this stage, learned counsel appearing on behalf of the complainant/prosecutrix prays that a copy of the order be provided in the readable (Braille) script to the complainant/prosecutrix.

8. The observations of the Supreme Court of India in **Vikash Kumar v.**

Union Public Service Commission, AIR 2021 SC 2447 in the context of inalienable rights of the differently abled under Rights of Persons with Disabilities Act, 2016(in short “RPwD Act”) are apt to be noted:

“.... Individual dignity undergirds the rights of persons with disabilities Act, 2016 . Intrinsic to its realization is recognizing the worth of every person as an equal member of society. Respect for the dignity of others and fostering conditions in which every individual can evolve according to their capacities are key elements of a legal order which protects, respects and facilitates individual autonomy. In seeking to project these values as inalienable rights of the disabled, the RPwD Act, 2016 travels beyond being merely a charter of non-discrimination. It travels beyond imposing restraints on discrimination against the disabled. The law does this by imposing a positive obligation on the State to secure the realization of rights. It does so by mandating that the State must create conditions in which the barriers posed by disability can be overcome. The creation of an appropriate environment in which the disabled can pursue the full range of entitlements which are encompassed within human liberty is enforceable at law. In its emphasis on substantive equality, the enactment of the legislation is a watershed event in providing a legal foundation for equality of opportunity to the disabled.....”

9. In the present case, both the petitioner as well as the prosecutrix are

visually impaired and seek effective enforcement of their rights from opposite ends. The parties are entitled to be well versed with the proceedings of the litigation they pursue and the documents which materially effect their legal rights. Section 12 of the RPwD Act, 2016 creates a mandate on the state for providing access to justice to differently abled and may be beneficially reproduced:

“12. Access to justice.—(1) The appropriate Government shall ensure that persons with disabilities are able to exercise the right to access any court, tribunal, authority, commission or any other body having judicial or quasi-judicial or investigative powers without discrimination on the basis of disability.

(2) The appropriate Government shall take steps to put in place suitable support measures for persons with disabilities specially those living outside family and those disabled requiring high support for exercising legal rights.

(3) The National Legal Services Authority and the State Legal Services Authorities constituted under the Legal Services Authorities Act, 1987 (39 of 1987) shall make provisions including reasonable accommodation to ensure that persons with disabilities have access to any scheme, programme, facility or service offered by them equally with others.

(4) The appropriate Government shall take steps to—

(a) ensure that all their public documents are in accessible formats;

(b) ensure that the filing departments, registry or any other office of records are supplied with necessary equipment to enable filing, storing and referring to the documents and evidence in accessible formats; and

(c) make available all necessary facilities and equipment to facilitate recording of testimonies, arguments or opinion given by persons with disabilities in their preferred language and means of communication”

10. On a clear reading of Section 12 of the RPwD Act, 2016 it can be seen that a positive duty has been cast upon the appropriate government under sub-section 4 to ensure that all public documents are in accessible formats. Further it is mandated to make available all necessary facilities and equipment to facilitate recording of testimonies, arguments or opinion given by **persons with disabilities in their preferred language and means of communication**. Right to access to justice includes the right to receive documents to which the parties are legally entitled in the language and means of communication decipherable by them.

11. Therefore in the facts and circumstances, the State is directed to make suitable arrangements and provide the prosecutrix as well as the petitioner the copy of the documents to which they are legally entitled in their preferred language and means of communication (i.e. Braille script) to ensure that they can effectively pursue and protect their legal rights. The state government is also directed to make necessary arrangements for providing the court documents in a readable language to the visually impaired in all such cases

wherever the circumstances so warrant and information be suitably disseminated to bring it to notice of all concerned.

The present Bail application is accordingly disposed of.

A copy of this order be sent to the learned Trial Court; Secretary, Department of Legal Affairs, Ministry of Law & Justice, Government of India; Chief Secretary Government of NCT of Delhi and Registry, Delhi High Court forthwith for necessary compliance.

APRIL 07, 2022/A

**ANOOP KUMAR MENDIRATTA
(JUDGE)**

