

Bail Application no. 30780/2016

Brij Mohan @ Birju

versus

State

FIR No. : 718/16

Under sections : 376D/328/365/506 of the Indian Penal Code.

PS : Ambedkar Nagar

24.12.2016

Present : Mr. Pankaj Srivastav, Advocate for accused Brij Mohan @ Birju.  
Mr. Wasi-ur-Rahman, Additional Public Prosecutor for the State  
alongwith Inspector Saroj Bala, IO of the case.

This is an application for bail under section 439 of Cr.P.C. made on behalf of accused Brij Mohan @ Birju, who was arrested on 23.12.2016 and since then has been in custody. Reply to the application is filed.

Heard. Having drawn my attention on the contents of the application and the documents filed alongwith the same it is submitted by counsel for the accused that the accused is the Nandoi of the prosecutrix and he has been falsely implicated in the present case. It is further submitted by counsel for the accused that the relations between the prosecutrix and her husband are estranged and prior to the registration of the present case at police station Ambedkar Nagar the prosecutrix made a complaint before Sh. Rakesh Kumar Rampuri, Metropolitan Magistrate, Tis Hazari Courts, Delhi and the said Magistrate called a report and from the said report it was revealed that the complaint made by the prosecutrix was false. It is further submitted by counsel for the accused that subsequently, the prosecutrix made similar complaint before the SHO, police station Ambedkar Nagar as a result of which

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the accused was arrested and he has been in jail. It is further submitted by counsel for the accused that the prosecutrix also falsely implicated the accused in another case bearing FIR no. 316/2016 under sections 498A, 406 and 506 of the Indian Penal Code registered at police station Ambedkar Nagar and in the said case by order dated 30.9.2016 passed by Sh. Ajay Kumar Jain, the learned Additional Sessions Judge, South, Saket, New Delhi an order of anticipatory bail has already been passed. It is further submitted by counsel for the accused that the offence was allegedly committed on 05.6.2016 whereas the FIR was got registered on 21.12.2016 and thus there is unexplained delay in registration of the FIR. It is further submitted by counsel for the accused that the accused is no more required for the investigation and as no useful purpose will be served by keeping the accused in jail, therefore, the application may be allowed and the accused may be released on bail.

Per contra, it is submitted by the learned Additional Public Prosecutor, who is assisted by the IO of the case, that there are serious allegations against the accused and the other accused persons are yet to be arrested. It is further submitted by the learned Additional Public Prosecutor that keeping in view the gravity of allegations against the accused and the status of the investigation, the application may be dismissed.

I have given my thoughtful consideration to the submissions made on behalf of the parties.

As per the police file, on 21.12.2016 at the instance of the prosecutrix FIR no. 718/16 under sections 328, 365, 376D and 506 of the

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Indian Penal Code was registered at police station Ambedkar Nagar. The prosecutrix informed the police that she got married with Bunty on 06.6.2010 and thereafter, some dispute had arisen between her and her husband's family. The prosecutrix further informed the police that on 05.6.2016 her Jeth Manoj and Nandoi Birju came to her house and asked her to come at Ajmeri Gate so that a settlement could be effected between her and her husband. The prosecutrix further informed the police that she accompanied them and on the way her Nanad Asha also joined them. The prosecutrix further informed the police that subsequently the said three persons took her to a building at Chandni Chowk, where Pepsi and Samosa were served to her and after consuming them she became unconscious and when she came to her senses it was discovered that she was ravished by Manoj and Birju and they had also taken her photographs in nude condition. The prosecutrix requested the police to register an FIR.

After registration of the FIR, on 22.12.2016 the statement of the prosecutrix was recorded under section 164 of Cr.P.C. and before the Magistrate she reiterated her version given in the FIR. On 23.12.2016 the accused was arrested.

From the documents produced before the court it has revealed that another FIR bearing no.316/16 was got registered by the prosecutrix against the accused and others and in the said case on 30.9.2016 an order of anticipatory bail was passed in favour of the accused and other persons named in the said FIR. From the documents produced before the court it has also

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emerged that another complaint was made by the prosecutrix before the learned Metropolitan Magistrate at Tis Hazari Courts, Delhi, where a report was filed absolving the accused and other persons.

As per the FIR and the statement of the prosecutrix the offences were committed on 05.6.2016, whereas the FIR was got registered after six months. There is no explanation as to why there is delay in registration of the FIR. As already observed, the relations between the prosecutrix and her husband and his family members are not cordial and litigations are pending between them. The mobile phone of the accused has already been seized and his potency test has also been got conducted. The accused is no more required for investigation purpose. In the facts and circumstances of the case, no useful purpose will be served by keeping the accused in jail. In these circumstances, the application is allowed and it is directed that accused Brij Mohan @ Birju be released on bail in case FIR No.718/16, police station Ambedkar Nagar subject to his furnishing a personal bond in the sum of Rs.50,000/- with one surety of like amount upto the satisfaction of the learned Metropolitan Magistrate (MM)/Link MM/Duty MM. File be sent to records.

(Manoj Kumar)  
Additional Sessions Judge-01  
South:Saket:New Delhi  
24.12.2016