

OUT TODAY / MOST IMMEDIATE

D-5

HIGH COURT OF DELHI AT NEW DELHI

6073

/Crl.

Dated 30/1/24

D/O

From :

The Registrar General,
Delhi High Court,
New Delhi.

Office of District & Sessions Judge Patala House Court, New Delhi
Distry No. 364
Dated 30/1/24
New Delhi District

To:

1. The Ld. Principal & Session Judge, Central Distt., Tis Hazari Courts Delhi.
2. The Ld. Principal & Session Judge, North Distt., Rohini Courts, Delhi.
3. The Ld. Principal & Session Judge., West Distt., Tis Hazari Courts, Delhi.
4. The Ld. Principal & Session Judge., New Delhi., Patiala House Courts, Delhi.
5. The Ld. Principal & Session Judge., East Distt., Karkardooma Courts, Delhi.
6. The Ld. Principal & Session Judge., North East Distt, Karkardooma Courts, Delhi.
7. The Ld. Principal & Session Judge., Shahdara Distt., Karkardooma Courts, Delhi.
8. The Ld. Principal & Session Judge., North West Distt., Rohini Courts, Delhi.
9. The Ld. Principal & Session Judge., Outer Distt., Rohini Courts, Delhi.
10. The Ld. Principal & Session Judge., South West Distt., Dwarka Courts, Delhi.
11. The Ld. Principal & Session Judge., South Distt., Saket Courts, Delhi.
12. The Ld. Principal & Session Judge., South East Distt., Saket Courts, Delhi.
13. The Ld. Principal & Session Judge., CBI Distt., Rouse Avenue Courts, Delhi.

CRL M.C 2159/2020

Rajan Devi

..... Petitioner's

Vs

State (Govt of NCT of Delhi) & Anr

..... Respondents

Petition U/S 482 of CR.P.C 1973 for setting aside of order dated 13.10.2020 passed by ASJ-02 (South West), Dwarka Courts), Delhi in B.M 4006/2020, whereby anticipatory bail has been granted to respondent no 2

Sir/Madam

I am directed to forward herewith for immediate compliance/necessary action a copy of judgment/order dated 13.09.2023 passed in the above case by Hon'ble Ms. Justice Swarana Kanta Sharma, of this Court.

Other necessary directions are contained in the enclosed copy of order.

Encl : Copy of order dated: 13.09.2023
and Memo.of Party

Yours faithfully,

AOJ (Cri-II)

For Registrar General

3

IN THE HIGH COURT OF DELHI AT NEW DELHI

CRL. M.C. NO. OF 2020

IN THE MATTER OF :

Rajan Devi ... Petitioner
Versus
State (Govt. of NCT of Delhi) & Anr ... Respondents

MEMO OF PARTIES

Rajan Devi,
D/o Sh. Prakash,
R/o RZF-63, Soni Sadan,
Mahavir Enclave,
New Delhi-110045 ... Petitioner

Versus

1. State
(Govt. of NCT of Delhi)
Sachivalaya, New Delhi.
Email id: dhcprosecutiondelhipolice@gmail.com

2. Ashish, Thakur,
r/o Gowallow, Gandoh,
Doda, Jammu & Kashmir.
Email id. advocatenonukhera@gmail.com ... Respondents


TARUN GUPTA

ADVOCATE FOR THE PETITIONER

NEW DELHI

B-7/47, SAFDARIJUNG ENCLAVE, MAIN

DATED: 3.11.2020

NEW DELHI - 110 029

Email: tarun.2349@gmail.com



S~

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

%

Reserved on: 04.09.2023
Pronounced on: 13.09.2023

+ **CRL.M.C. 2159/2020****RAJAN DEVI**

..... Petitioner

Through: Mr. Tarun Gupta and Mr.
 Anmol Mishra, Advocates.

versus

STATE (GOVT. OF NCT OF DELHI) & ANR. .. Respondents

Through: Mr. Manoj Pant, APP for the
 State with WSI Sanju Kumari,
 PS Palam Village.

Mr. Nonu S. Khera, Senior
 Advocate alongwith Mohd.
 Ahsan Khanji, Advocate for R-
 2

CORAM:**HON'BLE MS. JUSTICE SWARANA KANTA SHARMA****JUDGMENT****Index to the Judgment**

FACTUAL BACKGROUND.....	2
ARGUMENTS ADDRESSED BY BOTH THE PARTIES	6
ANALYSIS AND FINDINGS.....	9
USE OF DEROGATORY LANGUAGE IN PLEADINGS	14
i. Necessity of Reasonable Diligence While Drafting Pleadings.....	18
ii. Balancing the Use of 'Strong Language' with the Cause of Justice.....	19
CONCLUSION AND DIRECTIONS	21



SWARANA KANTA SHARMA, J.

1. The present petition under Section 482 of the Code of Criminal Procedure, 1973 ('*Cr.P.C*') has been filed by the petitioner seeking setting aside of order dated 13.10.2020, passed by learned Additional Sessions Judge-02, South-West, Dwarka Courts, Delhi ('*learned ASJ*') in B.M.4006/2020 whereby anticipatory bail has been granted to accused/respondent no. 2.

FACTUAL BACKGROUND

2. Brief facts of the case are that the present FIR bearing no. 574/2020 was registered on 19.08.2020 under Sections 376/506 of Indian Penal Code, 1860 ('*IPC*') at Police Station Palam Vihar, on the basis of a complaint lodged by the petitioner/complainant alleging therein that respondent no. 2 had committed rape upon her on false pretext of marriage and had cheated the complainant. It is alleged that the complainant/petitioner is a single mother of two children and is doing her own business in Punjab, and the respondent no. 2 used to send messages to petitioner on regular basis since August, 2019 on her WhatsApp number, however, she never used to reply to the same. It is stated that the complainant always wanted to settle down in her life and get married to a responsible person as she did not want to involve herself in a fake relationship, and she had conveyed this fact to respondent no. 2. As mentioned in the complaint, the complaint had provided the screenshots of the WhatsApp conversation between her and the accused/respondent no. 2. It is further alleged that in the



very first audio and video call, she had informed the respondent no. 2 that she has two children, however, the accused always insisted to meet her in person, but the complainant had refused to meet him. It is stated that on 27.10.2019, respondent no. 2 had again started sending WhatsApp messages to her on one pretext or the other and had also started making video calls to her which she never used to answer. He, however, always pressurized her to attend the video calls. It is alleged that respondent no. 2 had allured the complainant and had told her that he was in love with her and wanted to get married to her. She, however, alleges that he had disclosed his name as Akash Thakur and not Ashish Thakur. It is also alleged that she used to visit her native home at Haryana and during that time, respondent no. 2 had made a WhatsApp video call alongwith routine ordinary calls to the complainant and had also spoken to her sister, sister-in-law and her children, and he had tried to convince family members of the complainant that he was interested to get married to her. It is stated that the family members of the complainant had tried to make him understand that his family will not accept the complainant as she already has two children, however, he had convinced sister of the complainant that he will handle this issue himself and will convince his family. The victim was allured and the accused/respondent no. 2 had succeeded in making the petitioner fall in love with him, however, he had exploited the emotions and feelings of the petitioner. As alleged, the respondent no. 2 had requested the complainant that she should inform him whenever she will visit her residence at Delhi as he wanted to visit Delhi to meet her. Allegedly, he had again



started calling her during day and night and had tried to convince her that she should personally meet him to know him better. Therefore, the complainant had gone to meet him in Delhi on 27.01.2020 and had informed Ashish Thakur that she was in Delhi. The respondent no. 2 had also reached Delhi at her residence where he had again convinced the complainant that he considered her as his legally wedded wife and he had started addressing her as not R. Devi but R. Thakur. It is alleged that at Delhi, accused/respondent no. 2 had made physical relations with the complainant on the pretext of getting married to her, at the earliest. Thereafter, he had stayed with the complainant in Delhi for two days i.e. on 28.01.2020 and 29.01.2020 at her residence and had continued to make physical relations with her. On 02.02.2020, he had again visited Delhi and had again made physical relations with her at her home in Delhi on the pretext of getting married to her at the earliest. It is stated that the complainant had no reason to suspect the intention of the accused, and in case she would have doubted his intention, she would have never indulged in emotional and physical relationship on the pretext and assurance of marriage given by him. It is also stated that he had again asked her to meet him on 05.02.2020, however, she had refused to meet him for the purpose of physical relationship as she wanted a commitment of marriage from the accused and had given 20 days time to him for the purpose of finalizing the marriage proposal with his family members. It is stated in the complaint that in the meantime, she came to know that the name disclosed by the accused as Akash Thakur was not his real name and his actual name was Ashish Thakur. He always used to



assure her that she and her children are his sole responsibility and it was their family tradition to send children outside the city for higher education and he will also send the children outside the city for the purpose of education after getting married to her. It is alleged that the accused had assured her the same for the purpose of indulging into physical relationship, and he also used to talk to the complainant from 6:00 PM till 3:30 AM every day, and also used to send messages to her family members. On 16.03.2020, he had requested the complainant that he was going to Gujarat for some urgent work and she should meet him at Delhi. On 16.03.2020, he had met her at her residence and he had formatted the mobile phone of the complainant on the pretext of calling some other person. He had done so with ulterior motive to delete the entire data including photographs, messages, chats etc. of respondent no. 2 from time to time with the complainant and her family members. It is alleged that after formatting the mobile of the complainant, his behaviour towards her traumatically changed and he blamed her that she had allured him in the love affair. It is alleged that the accused had misused her physically and emotionally with ulterior motive of only sexually exploiting her on the pretext of marriage whereas he never intended to get married to her. Thereafter, whenever the complainant used to make phone calls to him, he used to threaten her to destroy her family in case she will take any legal action against him, and always used abusive language with her and threatened her with dire consequences. As alleged, he had also offered her money so that she will not take legal action against him, however, she had told him that money



cannot buy her as she is an emotional person and will take legal action against the wrong acts committed by him. On these allegations, the present FIR was registered. Thereafter, *vide* order dated 13.10.2020, the learned ASJ was pleased to grant anticipatory bail to the accused/respondent no. 2.

ARGUMENTS ADDRESSED BY BOTH THE PARTIES

3. Learned counsel for the petitioner/complainant states that the learned ASJ has committed an error in granting anticipatory bail to the accused without taking into account the fact that the case is serious in nature and that accused used to regularly send messages to the complainant pretending that he was seriously willing to get married to her. It is argued that the accused had also spoken to the entire family members of the petitioner/complainant and had won her trust, and with dishonest intention, he had sexually exploited her. It is also stated that the accused used to speak to her for long hours on phone and he had induced her to meet him in person in Delhi and had expressed his desire to get married to her. It is submitted that the learned ASJ also failed to take into account that in the first few conversations, complainant had herself told the accused about her previous marriage, children and Panchayati divorce, and the accused through his persuasive tricks had made the complainant believe that with her Panchayati divorce, she can validly marry the accused. It is also stated that the learned ASJ failed to take into account the fact that the accused was an army man and therefore, the complainant believed his words under the impression that he would marry her. It



is argued that the accused had continuously made physical relations with her on 27.01.2020, 28.01.2020, 29.01.2020 and 02.02.2020 by putting her under misconception of fact that he wanted to marry her. It is argued that the learned ASJ also failed to take into account the fact that the accused had managed to format the mobile phone of the complainant and delete proofs of conversation, photographs and video recordings between them with ulterior motive to destroy evidence. It is stated that the impugned order is perverse, erroneous, without any reasons and has resulted in gross miscarriage of justice to the petitioner/complainant. It is also stated that the reasoning of the learned ASJ that since she was not divorced from her earlier husband, she cannot be said to be guilty of committing sexual intercourse with her on the pretext of marriage is ex-facie perverse and erroneous. It is stated that the learned ASJ failed to consider that if a man commits sexual intercourse with a girl on false pretext of marriage, it amounts to offence of rape. It is stated that the accused already knew that the complainant was married and had children which is apparent from the conversations between the parties. However, he had still deceitfully induced her to have sexual intercourse with him, misrepresenting that since she has already obtained the Panchayati divorce, she can validly marry him at any point of time and he will handle the issue of first marriage being an army man and had thus, sexually exploited her. It is also argued that the false promise itself was of immediate relevance and had direct nexus with complainant's decision to engage in sexual acts. It is stated that the wrong observations on the merits of the case at the time of grant of



anticipatory bail have resulted in causing injustice to the complainant, and the learned ASJ has shown unwarranted sympathy to the accused who had sexually exploited a woman on false pretext of marriage. It is therefore stated that the order dated 13.10.2020 passed by learned ASJ be set aside.

4. It is also stated that by learned counsel for the petitioner/complainant the learned ASJ failed to take into account that by making observations on merits of the case against the complainant, while passing an order for grant of anticipatory bail, had virtually exonerated the accused of the charges levelled against him. It is therefore argued that such observations be expunged from the impugned order.

5. Learned APP for the State has also submitted that the observations made in the anticipatory bail order against the complainant on the merits of the case were unwarranted and have a bearing on the trial of the case and those observations need to be expunged.

6. On the other hand, learned Senior counsel for the accused/respondent no. 2 argues that there are no reasons to interfere with the impugned order as the learned ASJ had rightly granted anticipatory bail to the accused after taking into account all the facts and circumstances of the case and the conduct of the complainant herself. Therefore, it is prayed that the petition be dismissed.

7. This Court has heard arguments addressed by learned counsel for petitioner/complainant as well as learned APP for the State, and has perused the material on record.



ANALYSIS AND FINDINGS

8. In the present case, learned ASJ has passed the anticipatory bail order dated 13.10.2020, and the relevant portion of the order which is primarily challenged, alongwith the decision of grant of anticipatory bail, reads as under:

“Prosecutrix on last date of hearing submitted that her divorce took place in Panchayat in West Bengal but as per report regarding marital status of prosecutrix received today, prosecutrix is still married and has not been divorced.

In case, no legal divorce of prosecutrix took place, how she can be lured by accused on the pretext of marriage is beyond understanding of this court. So much so, present FIR has been got lodged by prosecutrix and still legal proceedings for divorce of prosecutrix are to be initiated by prosecutrix. In these circumstances, to say that prosecutrix was lured by accused on pretext of marriage by accused for doing intercourse does not appear to be logical when prosecutrix is aware of her legal status i.e. she is married and yet to obtain divorce from her husband.

It has been alleged by prosecutrix that accused refused to marry her but legally accused cannot marry prosecutrix on account of prosecutrix herself being already married.

Accused is stated to be serving in Indian Army and having clean antecedents. Prosecutrix despite getting lodged FIR U/sec 376/506 IPC in Delhi has sent complaint to Punjab Police at Bhatinda by post against accused (as admitted by prosecutrix on LDOH). It appears that prosecutrix is trying to harass accused by lodging complaints at different places for same offence.

Ld. Additional PP for State has opposed grant of anticipatory bail to accused as investigation in the matter is still pending.

Keeping in view the circumstances as discussed above, without commenting on merits, I deem it appropriate to allow anticipatory bail application of accused.”

9. This Court notes that the case was under investigation when the impugned order granting anticipatory bail to the accused/respondent no. 2 was passed. As per Status Report filed on



record, the complainant was medically examined *vide* MLC No. 223/2020 dated 19.08.2020 wherein it was recorded that the complainant had been in relationship with the accused for one year and was in sexual relationship with him for six months on promise of marriage. The complainant had also informed the doctor concerned that she was divorced and had two children. She was also pregnant with the child of the accused but had undergone MTP as he had refused to get married to her and to accept the child. In the status report, it is mentioned that the complainant had corroborated her version in the statement recorded under Section 164 of Cr.P.C. The MLC has also been filed alongwith the Status Report. It has also been mentioned in the Status Report that during investigation, Call Detail Records of phone numbers of petitioner and respondent no.2 revealed that they were in touch with each other and that complainant had also submitted screenshots of chats with respondent no. 2 to support her allegations. The same were also placed on record, and have also been annexed with the present Status Report. It is also stated that the petitioner/complainant had not been able to produce any document regarding her divorce from her previous husband and had informed that she had lost the documents. As informed to this Court, all these facts and the material collected during investigation were brought to the attention of learned ASJ at the time of hearing of anticipatory bail application filed by the accused/respondent no. 2.

10. This Court while going through the impugned order notes that the learned ASJ has made observations on the merits of the case and while granting anticipatory bail to the accused, has commented on the



merits of the case at the stage of grant of anticipatory bail itself when the matter was still under investigation. The observations of the learned ASJ that the complainant was still married and not divorced were yet to be tested during trial. The fact as to whether she actually had been divorced or not could have been proved only after leading evidence, and the prosecution collecting evidence as to whether customary divorce was valid or not, and the other connected issues regarding this fact being in the knowledge of the accused or not, in the face of the specific allegations in the complaint itself that the conversation between the accused and the complainant pointed out towards the accused convincing the complainant that he will handle in case any issue arose regarding her Panchayati divorce, was placed before the learned ASJ. Moreover, the complainant has alleged in her statement before the police as well as under Section 164 of Cr.P.C. that she had informed about the Panchayati divorce to the accused and he had convinced her that it was valid and he will deal with it and he was ready to get married to her. The focal point, therefore, for consideration was such conversations which finds no mention in the bail order. It was crucial to at least refer to those conversations when the status report and the complaint of the complainant stated so, since the learned ASJ was heavily relying on this fact that she was still married and therefore, there could not have been any false promise of marriage.

11. The learned ASJ has further observed at the time of granting anticipatory bail that since there was no legal divorce of complainant,



she could not have been lured by accused on pretext of marriage. The observations in this regard read as under:

“In case, no legal divorce of prosecutrix took place, how she can be lured by accused on the pretext of marriage is beyond understanding of this court. So much so, present FIR has been got lodged by prosecutrix and still legal proceedings for divorce of prosecutrix are to be initiated by prosecutrix. In these circumstances, to say that prosecutrix was lured by accused on pretext of marriage by accused for doing intercourse does not appear to be logical when prosecutrix is aware of her legal status i.e. she is married and yet to obtain divorce from her husband.”

12. Further, the learned ASJ also observed that though it is alleged by the complainant that accused had refused to marry her, however, legally the accused could not have married the complainant on account of complainant herself being already married. In this Court's opinion, the learned ASJ could not have commented on the same and should have refrained from saying so while passing anticipatory bail order since it was neither the matter in issue before him, nor the Court was giving a finding for the purpose of charge etc. The learned ASJ further notes that:

“Accused is stated to be serving in Indian Army and having clean antecedents. Prosecutrix despite getting lodged FIR U/sec 376/506 IPC in Delhi has sent complaint to Punjab Police at Bhatinda by post against accused (as admitted by prosecutrix on LDOH). It appears that prosecutrix is trying to harass accused by lodging complaints at different places for same offence.”

13. The impugned order records that it appears that the complainant is trying to harass the accused/respondent no. 2, though he has clean antecedents. The learned ASJ should have refrained from saying so at the time of passing of a bail order or even otherwise. Though the Courts have to pass a reasoned order while



granting or denying bail, but they are not required to decide the merits of the case or of the contentions in detail without mentioning in the order that the same will not be considered as opinion on the merit of the case. When the issues in question are still under investigation, regarding which evidence is yet to be collected by the prosecution; it would be a dangerous trend to give a categorical opinion about the same at the stage of grant of anticipatory bail, that too after two months of the registration of the FIR in question. In such circumstances, this Court observes that the categorical observations made at the time of passing of the anticipatory bail order were uncalled for and should have been avoided.

14. Therefore, this Court **directs** that nothing expressed in the impugned anticipatory bail order dated 13.10.2020 shall have any bearing on the merits of the case when the concerned learned Trial Court will decide the present case, at the stage of passing of final judgment. The learned Trial Court will decide the case irrespective of these observations, without being influenced by the same, on the strength of merit of the case as per law.

15. However, at the same time, this Court notes that the accused was granted bail in the year 2020 and the evidence of the petitioner/complainant has already been concluded before the learned Trial Court. There are no reports of accused having approached the complainant in any manner or having influenced her or threatened her during the last three years. Therefore, at this stage, there is no ground for cancellation of anticipatory bail granted to the accused/respondent no. 2.



USE OF DEROGATORY LANGUAGE IN PLEADINGS

16. Before parting with this case, this Court is constrained to note that the language used in the Counter affidavit filed on behalf of the accused/respondent no.2 includes certain derogatory terms when referring to the complainant, including phrases such as 'art of seduction,' which this Court strongly condemns.

17. The relevant portion of counter affidavit submitted on behalf of the accused/respondent no. 2 reads as under:

"3. That the petitioner used to chat with the respondent No. 2 and soon took the respondent. 2 into full confidence and the respondent No. 2 developed a liking for the petitioner Rajan Devi **without knowing about her extremely wicked or villainous designs, who by her seductive acts made the respondent. 2 to propose her for the marriage.** It is worth mentioning here that the respondent No.2 is a simple young person serving in the Indian Army and **had an intention to marry a faithful girl of his choice** in order to live a happy married life and due to such an intention the respondent No. 2 had proposed Rajan Devi for marriage.

6. That the respondent no. 2 due to the said excuses became a little suspicious and enquired about Rajan Devi and **became shocked to know that Rajan Devi is a divorcee and not virgin as disclosed by Rajan Devi.**

7. That the respondent no. 2 thereafter **again enquired from Rajan Devi about her marital status upon which Rajan Devi admitted that she is a divorcee and not virgin.** The respondent no. 2 then told Rajan Devi that she has betrayed the respondent no. 2 by not disclosing the same to him earlier and further told her that **he had already told her that the respondent no. 2 always wanted to marry a simple virgin girl and never wanted to marry a divorcee but the petitioner Rajan Devi being very cunning person controlled the situation by emotionally blackmailing the respondent. 2** through her chats and on phone/video calls by saying that her love is true and she had not disclosed her marital status to the respondent. 2 as she never wanted to loose the 8 respondent. 2 and **further through**



her art of seduction made the respondent. 2 to agree to marry the petitioner Rajan Devi despite she being a divorcee.

8. That soon thereafter the respondent no. 2 came to know that the petitioner Rajan Devi is not only a divorcee but also a mother of two kids from her ex-husband and the same was very shocking for the respondent 2 who felt fully betrayed and upon this the respondent. 2 clearly told Rajan Devi that she has not only betrayed the respondent. 2 but also played with the emotions of the respondent. 2 and as such the marriage between the respondent 2 and the petitioner Rajan Devi is not possible. Rajan Devi again tried to convince the respondent no. 2 by her seductive talks full of fake affection but this time the respondent no. 2 clearly told Rajan Devi that **neither he is interested to marry a divorcee with two kids and take their responsibility by forgetting the chances of having his own kids in future nor this shall be acceptable to his family.** The respondent no. 2 further told the petitioner that he would never have proposed the petitioner if she would have disclosed the truth to the respondent. 2 that she is a divorcee with two kids born out of her wedlock with her ex-husband..."

(Emphasis supplied)

18. It is stated in the counter affidavit that the accused/respondent no. 2 was a **simple young person serving in Indian Army and had intention to marry a 'faithful girl of his choice' in order to live a happy married life** and this is why he had proposed to the petitioner for marriage. The respondent no. 2 has also stated that the petitioner used to chat with him and soon took the respondent. 2 into full confidence, and he developed a liking for the petitioner without knowing about her **'extremely wicked or villainous designs'** who by her **'seductive acts'** made the respondent. 2 to propose her for the marriage. He has also stated that the petitioner had disclosed that she was a 'virgin' and looking for a suitable match and belongs to a suitable family. He also stated that the petitioner had not disclosed to him that she had children and was previously married, and she had



started making excuses when the accused had asked that he wanted to meet her parents, and she had told him that it was not possible since her mother was ill. It is stated that **he was shocked to know that the petitioner was not a virgin and was a divorcee.** It is also stated by respondent no. 2 that **he always wanted to marry a simple virgin girl and never wanted to marry a divorcee but the petitioner was a cunning person who had emotionally blackmailed him through her chats and phone calls by telling him that her love was true for him and had not disclosed her marital status to him and that through her 'art of seduction' had made respondent no. 2 to agree to marry her despite being a divorcee.** It is further stated by respondent no. 2 that **the petitioner was not even divorcee but also a mother of two children, and he had felt betrayed as she had played with his emotions, and thus, he had told her that their marriage was not possible.** It is stated that she had again tried to convince respondent no. 2 by her 'seductive talks', but he told her clearly that he was not interested to marry a divorcee with two children and to take responsibility by forgetting the chances of having his own children in further, and even the same shall not be acceptable to his family. It is further stated that he had also told her that he would have never proposed to the petitioner if she would have disclosed the truth to respondent no.2 that she is divorcee with two children from her ex-husband. He has also stated in his counter affidavit that the complainant had falsely claimed herself to be the legally wedded wife of respondent no. 2, and had threatened him that she will force him to marry her and accept her two children, and had



also demanded Rs.5,00,000/- or to marry her sister. It is further stated that she had made defamatory comments on social media about respondent no. 2, and had also uploaded pictures of the house of respondent no. 2 on her facebook account with a comment "*Mujhe Saajjan Kay Ghar Jaana Hai...*" due to which many of local friends and relatives of respondent no. 2 who reside in Doda in Union Territory of Jammu & Kashmir had come to know about the same and had raised questions about it. It is stated that he had lodged several complaints at Doda, Jammu & Kashmir. **It is further stated that it is a typical case of misuse of law, particularly Section 376 of IPC, by a lady like present petitioner as a tool to pressurize men like respondent no. 2 to surrender before her and to accept her illegitimate demands.** It is stated that he had never made physical relations with her, without her consent, and even she has not mentioned about any kind of resistance by her. It is stated that the petitioner is still married to her previous husband. **He states that it is shocking that she had earlier projected herself as a virgin but divorcee, and then informed that she was a mother of two children but still, she is not even divorced till date.**

19. Having gone through the contents of counter-affidavit filed on record on behalf of accused/respondent no. 2, this Court is of the opinion that use of inappropriate and derogatory language, undermining the dignity of individuals, based on their gender, falls beyond the permissible bounds of language expected in legal pleadings.



i. Necessity of Reasonable Diligence While Drafting Pleadings

20. In this Court's opinion, reasonable diligence must be followed while drafting pleadings. This necessitates refraining from the use of derogatory or offensive language against the opposite party. The goal is to ensure that all legal pleadings maintain the highest standards of respect, and legal ethics as well as promote the goal of justice for the person filing it, thereby fostering a legal system that is not just equitable, but respectable too.

21. By actively challenging and discarding gender stereotypes in their language, actions, and interactions, legal fraternity can **contribute to dismantling entrenched and hidden biases that have persisted in our society for far too long.** This necessitates avoiding the use of derogatory terms that perpetuate stereotypes and undermine the dignity and rights of individuals based on their gender. It is incumbent upon the legal community to champion a culture of gender sensitivity, embracing the values of fairness and respect in both their professional conduct and the legal documents they create with their hard work and art of drafting at their command.

22. In this regard, this Court is also of the opinion that use of such language in the pleadings goes against the **basic minimum standard expected for promoting a gender just environment as has been also been reiterated by the Hon'ble Supreme Court by releasing the 'Handbook on Combating Gender Stereotypes' which aims to assist judges and the legal community in identifying, understating, and combating stereotypes about women which**



may be used while drafting pleadings as well as orders and judgments.

ii. Balancing the Use of 'Strong Language' with the Cause of Justice

23. The adversarial nature of our criminal legal system can sometimes lead one of the parties to employ strong language in an attempt to advance their interests. Lawyers are entitled to present their clients' cases to the best of their abilities while maintaining fairness. However, this does not justify the use of offensive, abusive, disrespectful, derogatory, and misogynistic language in pursuit of this goal. This case serves as a gentle reminder to all involved in the judicial process that they should refrain from using such derogatory and demeaning language. Such language is not only offensive but also damaging to the honor and reputation of the parties involved.

24. While strong language may be necessary at times in legal pleadings to further the cause of justice, it must not cross the line into offensiveness and should always be in keeping with the dignity of the legal profession. The pleadings should, as far as possible, maintain a dignified tone.

25. However, in furthering his cause, the respondent no. 2 herein became unmindful of the fact that he used disrespectful and stereotypical language in the counter affidavit. The case of the accused and the pleadings could have been equally forceful without resorting to use of derogatory phrases such as 'art of seduction',



‘wicked or villainous designs’, and ‘seductive talks full of fake affection.’

26. This Court, while respecting the rights of parties to present their arguments, emphasizes that both litigating parties and their counsels have a responsibility to comment in a manner that upholds the cause of justice. As officers of the Court, they should hold the pleadings to a higher standard. The content as incorporated in the counter affidavit should have been avoided, as the same exceeds the limits of propriety which must be maintained while drafting of pleadings. The use of such derogatory words as mentioned in the preceding paragraphs should have been avoided as even sans them, the force and effect of the pleading would have been the same.

27. The use of infelicitous language transgressing on the character of the woman and to state that her marital status made her lesser than a person or a woman and the marital status of the man in question entitled him to a virgin woman and an unmarried person could not have had sexual relationship with a woman already married was not only derogatory but affront to the principles of equality, dignity and respect.

28. While exercising judicial restraint, this Court refrains from recording additional observations on this issue. However, it emphasizes the importance of exercising caution when drafting and filing pleadings or documents in a Court of law, irrespective of the gender of the individuals involved.



CONCLUSION AND DIRECTIONS

29. In the present case, in addition to challenging the grant of anticipatory bail to the accused, the complainant was also aggrieved by the fact that the learned ASJ *vide* order dated 13.10.2020 had given certain findings on the merits of the case at the stage of grant of anticipatory bail itself, thereby virtually exonerating the accused of all charges and rendering the trial a mere formality.

30. As already taken note of in preceding discussion, the learned ASJ in the impugned order, while granting anticipatory bail to the accused, had recorded several findings on the merits of the case including observations that it appeared that the complainant was trying to harass the accused, without expressing that such observations were solely for the purpose of deciding bail application and were not to be considered as its opinion on the merits of the case.

31. In this Court's opinion, the situation could have unfolded differently had the case been at the stage of charge or final disposal after evidence had been led and after the prosecution agency had collected evidence and filed a chargesheet. However, the impugned order pertains to grant of anticipatory bail to the accused, merely within a period of two months from the date of registration of FIR.

32. While there is no dispute on the proposition that the Courts are authorized as well as judicially required to record reasons while granting or denying bail, drawing conclusive findings even before the investigation is complete and evidence is collected, solely based on the contents of FIR and arguments addressed before the Court at the time of hearing of anticipatory bail application, should be avoided.



33. In this background, this Court deems it appropriate to issue the following **directions/guidelines**:

- i. The Trial Courts at the time of passing orders on bail applications or Revisionist Courts while adjudicating upon the orders challenged before them, **must add a paragraph in their orders/judgments that conveys that nothing expressed in the said order/judgment shall be construed as expression of opinion of the Court on the merits of the case**, so that there is no confusion to the learned Trial Court at the time of final disposal of the case.
- ii. Similarly, at the time of passing orders in other miscellaneous applications or revision petitions, which may not finally dispose of the case, a similar paragraph may be added in the order/judgment for the above-mentioned reason.
- iii. Even otherwise, Trial Courts should desist generally from passing remarks which have tendency to be treated as the final conclusion on an issue in question, at the stage of grant of bail itself when the chargesheet is yet to be filed by the prosecution.

34. Recording such an observation is necessary since at the preliminary stages, such as at the time of grant of anticipatory bail and when the investigation is not complete, the concerned Judge will not have the advantage of the investigation carried out by the prosecution and the material collected in support thereof including documents, evidence and statements of witnesses, and thus, only *prima-facie* observations are made for the purpose of deciding such



bail applications. This would also ensure that none of the parties use the observations recorded by the concerned Court in an order to their advantage at the stage of final disposal of the case.

35. Insofar as the prayer regarding cancellation of bail is concerned, for the reasons recorded in paragraph no. 15, there are no grounds for cancellation of anticipatory bail granted to the accused/respondent no. 2 by virtue of impugned order.

36. Thus, in view of aforesaid observations and directions, the present petition stands disposed of.

37. The judgment be uploaded on the website forthwith.


SWARANA KANTA SHARMA, J

SEPTEMBER 13, 2023/ns

