

ARNESH KUMAR
मिनेश कुमार
Metropolitan Magistrate-03
महानगर इण्डियन-03
Room No. 212, Tis Hazari, Delhi-54
कमरा नं. 212 तीस हजारी दिल्ली-54

IN THE COURT OF DUTY MM, CENTRAL, TIS HAZARI, DELHI.
FIR No. 55/2019
PS : Bara Hindu Rao
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10.08.2019

A bail application under Section 437 Cr.P.C of
accused Atir Shamim S/o Sh. Shamim Abbas.

Present: Ld. APP for the State.

Accused Atir Shamim is produced by the IO after fresh
arrest.

Sh. Bharat Bagga & Sh. Rishabh Kumar, Ld. Counsel for
accused/applicant.

Complainant in person with Ld. Counsel Sh. Rashid Hashmi.

The IO has moved an application seeking 14 days judicial
custody remand of the accused.

Application has been moved by the applicant / accused
seeking bail under Section 437 Cr.P.C.

It has been argued by Ld. Counsel for accused/applicant
that the applicant/accused is an innocent person. He has been falsely
implicated by the complainant. There is matrimonial dispute between
the parties due to which the complainant made a false complaint and
misused the process of law. The police officials did not follow the
mandate of law prescribed by Hon'ble Supreme Court of India in case
titled Arnesh Kumar Vs. State of Bihar. The accused never pronounced
any talaq. It was the complainant who had left the company of the
accused. The accused is a law abiding citizen. The custody of the accused
is not required for further investigation. He is not a previous convict. The
applicant / accused belongs to a respectable family. No purpose would
be served by sending him behind the bars. The accused/



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applicant is ready to furnish reliable and sound surety to the satisfaction of the Court. He undertakes not to temper with the evidence or jump the bail if the bail is granted by this Court. He is ready to abide by all the terms and conditions which may be imposed by the Court. Hence, it is prayed that the accused/applicant may be granted bail.

Learned APP is assisted by Ld. Counsel for the complainant. It has been argued by them that there are serious allegations against the accused. The complainant was subjected to cruelty when she was staying with the accused. The accused and his family members used to torture the complainant. Therefore, the complainant had made a complaint to the police on 01.04.2019. However, when the accused and his family members came to know about the complaint, they approached the complainant and asked her to take the complaint back. They had promised not to create any trouble for the complainant in future. They had begged to take the complaint back. Therefore, in order to save her marriage, the complainant had withdrawn her complaint on 04.04.2019. Thereafter, on 23.06.2019, the accused alongwith his family members came to the room of the complainant and the accused pronounced triple talaq. She was asked to leave the house and her son. The accused was well aware that at that time parents of the complainant were out of country. The complainant was under severe trauma. After two days of



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the said incident, the family members of the accused had sent "fatwas" on the whatsapp of the brother of the complainant stating that the talaq was complete. The accused might destroy the evidence if he is released on bail. The other persons who were with the accused at the time of pronouncing triple talaq are yet to be interrogated. The statement of the victim under Section 164 is yet to be recorded. Investigation is at initial stage. The accused might hamper the investigation if he is released on bail. He is not entitled to bail. Hence, it is prayed that application may be dismissed.

In rebuttal, Ld. Counsel for the applicant accused would argue that there are no merits in the allegations made by the complainant. The accused undertakes to obey the conditions imposed by this Court.

I have heard the rival submissions and perused the material available on record.

The accused has been arrested under Section 4 of the Muslim Women (Protection of Rights on Marriage) Act, 2019 which had received the assent of the President of India on 31.07.2019. However, Section 1 (3) of the Act provides that the Act shall be deemed to have come into force on 19.09.2018. The Act makes the pronouncement of talaq in the form of talaq-e-biddat or any other similar form having the effect of



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instantaneous and irrevocable divorce, a punishable offence. Section 4 of the Act provides a punishment of imprisonment for a term which may extend to three years and fine. Section 7 makes the offence cognizable and compoundable. Section 7 (c) of the Act provides that the person arrested for an offence under the Act shall not be released on bail unless the Magistrate, on an application filed by the accused and after hearing the victim upon whom talaq is pronounced, is satisfied that there are reasonable grounds for granting bail to such person.

In view of the specific provisions of the Act, I am of the opinion that the ratio of the judgment titled **Arnesh Kumar Vs. State of Bihar and Another, Criminal Appeal no. 1277/2014, decided on 02.07.2014**, is not applicable in the present case.

In the present case, the allegations against the accused are that he had pronounced triple talaq in violation of Section 4 of the Act. The accused has been arrested after registration of the FIR. I have interacted with the complainant and the accused. The complainant has made the allegations as are mentioned hereinabove in the arguments of Ld. APP and Ld. Counsel for complainant. The accused has stated that he did not pronounce triple talaq. He has also stated that he loves the complainant.

Perusal of the complaint, which had become on the basis of FIR, would show that the complaint was made by the victim on 09.08.2019.



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She has stated that on 23.06.2019, the accused and his family members had come to her room. The family members of the accused had pressurized him to pronounce triple talaq. Thus, as per the victim herself, the accused was pressurized by her family members, and thereafter he had pronounced triple talaq. There is one more aspect. The present complaint was made by the victim after a delay of more than 45 days of the alleged incident. As per the complainant herself, she had made one complaint of torture against the accused and her family members on 01.04.2019 which was withdrawn by her on 04.04.2019. The complainant got married with the accused in the year 2011. Admittedly, no other complaint was ever made by her against the accused or her family members. The whatsapp messages are also stated to have been sent through the mobile of the brother of the accused. No message is shown to be sent through the mobile phone of the accused. The accused is a permanent resident of Delhi. There does not appear to be any reasonable ground to suspect that the accused would run away from the law if he is released on bail. His custody does not appear to be necessary for the purpose of further investigation.

In view of the the above, after hearing the victim, the state and the accused, I am satisfied that there are reasonable grounds for granting bail to the accused. The accused is therefore, granted bail on furnishing



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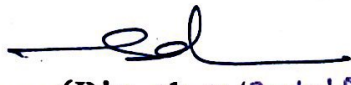
bail bond in the sum of ₹30,000/- with one surety of like amount and subject to the following conditions:

1. The accused shall cooperate in investigation as and when required by the IO.
2. He shall not try to induce, threat or influence the witnesses in any manner.
3. He shall not leave the country without prior permission of the concerned Court.
4. He shall submit the details of his passport to the IO within two days.
5. He shall not done any act causing the evidence of the offence to disappear.

With the abovementioned directions, the accused is granted bail. The application for bail and the application of the IO for judicial custody remand are disposed of.

Copy be given dasti to the accused and IO.




Metrop. (Dinesh Kumar) (Central-08)
DUTY MM/Central/THC/Delhi/10.08.2019