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

+ **BAIL APPLN. 809/2013**

VISHESH KHOKHAR

..... Petitioner

Through : Mr.Sudhir Nandrajog, Sr.Advocate
with Mr.Ajay Digpal, Mr.Neeraj and
Ms.Aarti Bansal, Advocates.

versus

STATE

..... Respondent

Through : Mr.M.N.Dudeja, APP for the State.
SI Monika, PS Khajuri Khas.
Mr.Vireshwar Tyagi, Advocate for
the Complainant.

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

ORDER

20.05.2013

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1. Petitioner-Vishesh Khokhar seeks anticipatory bail under Section 438 Cr.P.C. in case FIR No.228/2013 under Section 376/312/506/34 IPC registered with police station Kajuri Khas. Status report has been filed.

2. Learned Senior counsel for the petitioner urged that allegations against the petitioner by the complainant, posted as a constable in PCR, are false and fabricated. The petitioner never promised to marry the prosecutrix. She came into contact with the petitioner in 2010 when both were working together during Common Wealth Games. There was

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no love affairs between them. She did not lodge any complainant since 2010. The present complaint is motivated as the prosecutrix has come to know about the marriage of the petitioner going to be solemnized with the girl residing in her locality. There is no evidence to corroborate the alleged incident of rape and abortion. The petitioner has clean antecedents and is ready to join the investigation as and when required. His custodial interrogation is not required as the statement of prosecutrix has already been recorded under Section 164 Cr.P.C. Brother and Bhabhi of the petitioner have already been granted anticipatory bail. His father has been granted interim bail till 15.05.2013. Reliance was placed on *Jagdish Nautiyal Vs.State* in which bail application No.1317/2012 was disposed of vide order dated 29.11.2012 and *Pradeep Kumar @ Pradeep Kumar Verma Vs.State of Bihar and Anr.* (Crl.A.No.1086/2007) decided on 07.08.2007.

3. Learned Additional Public Prosecutor has opposed grant of anticipatory bail. He urged that custodial interrogation of the petitioner is required to ascertain as to from where the medicine to terminate the pregnancy was arranged.

4. I have considered the statements of the parties and have examined the record. It reveals that the prosecutrix lodged complaint on 30.04.2013 and levelled serious allegations against the petitioner for obtaining her consent for sexual intercourse on the promise to marry her. She further alleged that twice she became pregnant but the pregnancy was terminated. She was assured time and again by the petitioner and her family members for her marriage with the petitioner. Finally they refused to perform the marriage. She further stated that due to the conduct and

behaviour of the petitioner and his family members she attempted to commit suicide and consumed poisonous substance. She was taken to GTB hospital on 30.04.2013 at about 10.45 A.M. and was medically examined.

5. The prosecutrix was posted as Constable in PCR in Delhi police during Common Wealth Games in 2010. The petitioner was working Sub-Inspector, a higher rank than that of the prosecutrix. In her statements under Section 161 Cr.P.C. and 164 Cr.P.C., the prosecutrix made categorical assertions that she was forced to have sexual relations with the petitioner on his promise to marry. She became pregnant twice. However, the pregnancy was got terminated by procuring medicine by the petitioner. She further levelled allegations of harassment and threats forcing her to take extreme step to consume poisonous substance. In *Uday Vs. State of Karnataka* AIR 2003 SCC 1639, it has been observed that there is no straightjacket formula for determining whether consent given by the prosecutrix to sexual intercourse was voluntary or whether it was under a misconception of fact. Where the prosecutrix willingly consented to having sexual intercourse with the appellant with whom she was deeply in love, not because he promised to marry her, only then it was taken as a consent not in consequence of any misconception of facts. In the instant case, the petitioner was superior in rank and allegedly indulged in regular sexual intercourse with the petitioner for long duration. The prosecutrix purportedly approached him and his family members for fulfilment of the promise and when there was denial to that, she consumed poisonous substance to commit suicide. Circumstances prima facie reveal that at no stage the petitioner was having an intention

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or inclination to marry the prosecutrix. It appears that the promise to marry allegedly held out by him was a mere hoax to obtain the prosecutrix's consent for sexual intercourse. The case is still at initial stage and the petitioner has not joined the investigation. Non-bailable warrants have been issued to ensure his presence.

6. Considering the severity of the offence and the allegations that the pregnancy was terminated twice illegally, I find no sufficient ground to grant anticipatory bail to the petitioner who was a public servant in active service with Delhi police as Sub-Inspector. It is to be ascertained as to how and under what circumstances illegal termination of pregnancy took place, where, how and by whom.

7. In the light of the above discussion, the anticipatory bail application is dismissed.


S.P. GARG, J

MAY 20, 2013
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