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IN THE HIGH COURT OF DELHI AT NEW DELHI

DATE OF DECISION: 26th NOVEMBER, 2013

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BAIL APPLN. 1815/2013

ANANDA D.V.

..... Petitioner

Through

Mr. Avi Singh and Mr. Aditya V.
Singh, Advocates

versus

STATE NCT OF DELHI

..... Respondent

Through

Ms. Fizani Hussain, APP
Mr. Puneet Mittal, Advocate for the
complainant along with the
complainant in person

CORAM:

HON'BLE MS. JUSTICE SUNITA GUPTA

J U D G M E N T

: SUNITA GUPTA, J.

1. This is an application u/s 439 Cr.P.C. for grant of bail filed on behalf of the applicant Ananda D.V. in FIR No.455/2013 u/s 376/380 IPC, PS Safdarjung Enclave.

2. It is submitted by Sh. Avi Singh, Advocate for the petitioner that as part of applicant's regular duties, he had to work with a vendor of Maruti Suzuki India Limited-NIIT Evolve, whose offices are at

Gurgaon. During meetings in Vasant Kunj, office of Maruti Suzuki in Gurgaon the applicant, aged about 28 years, met the complainant aged about 35 years. After two months of regular interaction, their friendship developed into a genuine relationship sometimes in the beginning of March, 2013. Although the complainant continued to live with her family, however, she also visited the applicant's house at Arjun Nagar once or twice a week. Their relationship started to undergo strain sometimes in the middle of May, 2013 when the complainant began to speak against the applicant's parents. The applicant tried to distance himself from the relationship but the complainant was persistent and used to coerce him and threaten him in order to continue the relationship. She also kept asking the applicant not to talk to his parents and friends and only spent time with her. In July, 2013, the complainant sent the applicant threatening messages. On 25th August, 2013, she came to the applicant's house in Arjun Nagar and demanded that he should inform his family about their relationship. The applicant called his family who were shocked and surprised. The complainant took 10 tablets of Vitrol but she did not swallow them and the applicant was able to get her to spit it out. She

then slept till 6:00 pm on 25th August, 2013. The complainant locked herself in the room and did not come out till midnight. The applicant got panicked and called a friend in Bangalore asking him to come to support him in Delhi. However, when the complainant came to know about the same, she threatened the applicant's friend with criminal charges if he comes to Delhi. She also threatened applicant that she would cause harm to his family and even kill herself if he did not transfer all the money in his bank account. He transferred Rs.3,50,000/- from his account to her account in ICICI Bank electronically.

3. On the intervening night of 25th/ 26th August, 2013, the applicant sought the intervention of his landlord. She made a missing person report at PS Safdarjung Enclave which was false. In a conversation recorded, the complainant, on 4th September, 2013 has clearly stated that her feelings for the applicant are intact and she was a willing and consensual party to the relationship. The applicant has been attempting to file a complaint of intimidation and harassment against the complainant at PS Safdarjung Enclave. On refusal by the police station to register the complaint, the applicant was constrained to file a

complaint with DCP, South on 19th September, 2013. It was submitted that the conduct of the complainant clearly reflects that it was entirely consensual relationship. The applicant has roots in the society. He is aged about 28 years and an engineer. He is in custody since 20th September, 2013. As such, he be released on bail.

4. Reliance was placed by the petitioner on the following judgments:-

Jagdish Nautiyal vs. State, 2013(1) JCC 311 para 11;

Arif Iqbal vs. State, 2009 (164) DLT 157, para 6,7;

Deepak Gulati vs. State, (2013) 7 SCC 675, para 21, 24;

Prashant Bharti vs. State, Supreme Court, CrI. A. No. 175/2013 arising out of SLP (CrI.) 1800 of 2009 dated January 23, 2013, para 22;

M.P. Lohia vs. State of West Bengal, (2005) 2 SCC 686, paras 7, 8, 9;

Sanjay Chandra vs. CBI, (2012) 1 SCC 40, para 21;

Moti Ram vs. State of MP, (1978) 4 SCC 47, para 14.

5. On the other hand, learned APP duly assisted by Sh. Puneet Mittal, learned counsel for the complainant, submitted that the accused

allured the complainant to marry her, which was refused by the complainant but on his insistence, he took her into confidence. The accused and the complainant also lived together at Gautam Nagar and thereafter reference was made to the detailed complaint made by the prosecutrix for submitting that till date even charge sheet has not been submitted, as such, applicant is not entitled to be released on bail.

6. Reliance was placed by the respondent on the following judgments:-

Karthi @ Karthick vs. State, 2013(7) Scale 777

Yedha Srinivasa Rao vs. State of MP, 2006 (3) JCC 1623

State of Himachal Pradesh vs. Shree Kant Shekari, AIR, 2004(SC) 4404

Nikhil Parashar vs. NCT of Delhi, 2010 (1) JCC 615

7. I have given my considerable thoughts to the respective submissions of learned counsel for the parties and the authorities relied upon by them.

8. At the outset, it may be mentioned that all the authorities relied upon by the learned counsel for the petitioner were also relied upon before the learned Trial Court and the same were considered and were distinguished by observing that in the case of ***Arif Iqbal*** (supra), the

complainant had developed physical relationship with the accused after administering intoxicating pills to her own family members at her own residence and taking this fact into consideration, the accused was granted anticipatory bail. In *Jagdish Nautiyal* (supra), the accused reiterated that he was unmarried and he would take care of complainant and her daughter. Believing it, the complainant had entered into a marriage ceremony with the accused on 10th May, 2010 in Budhisht Temple near Birla Mandir and photographs and necessary documentations were also done, where after, even registration of the marriage was applied. It was also observed that the complainant was also a member of Yoga Club where the accused and his wife had been going and the complainant knew the accused to be married. Taking all these circumstances into consideration, the accused was admitted to bail disbelieving that the complainant would not know the marital status of the accused. *Deepak Gulati* (supra) was the appeal against conviction and after taking into consideration material contradictions, improvements and embellishment in the statement of witnesses besides noticing that the complainant had inclination towards the accused and was willing to get married with him, the accused was granted benefit of

doubt and was acquitted. *M.P. Lohia* (supra), *Sanjay Chandra*(supra) and *Moti Ram*(supra) were relied upon in order to show as to when the anticipatory bail be granted.

9. So far as the legal principle regarding grant of bail enunciated in these judicial pronouncements, the same is undisputed. However, in these authorities also, it was observed that factual background of each and every case is to be considered.

10. On the other hand, in *Karthick (supra)* relied upon by counsel for the complainant, on facts, it was found that accused committed deceit with prosecutrix by promising to marry her. On the strength of the said deception, in the first instance, persuaded her not to disclose the occurrence to anyone, and thereafter repeatedly had sexual intercourse with her. Therefore, it was held that in the facts and circumstances, it was not even possible to accept the contention of the accused that sexual intercourse was consensual. In *Yedla Srinivasa Rao* (supra) also, on fact it was found that consent taken by accused with clear intention not to fulfil the promise and persuading victim to believe that he is going to marry her and obtain her consent for sexual intercourse cannot be treated as consent. In *State of Himachal*

Pradesh (supra), it was held that burden of proof is on accused. *Nikhil* (supra) was a bail application. There was accusation for false promise of marriage. Petitioner had sexual relation with petitioner not only because both knew each other but also because both the families consented to marriage. The application for grant of anticipatory bail was dismissed.

11. Turning to the factual matrix of the case, a perusal of the FIR goes to show that the same is very detailed one disclosing that the petitioner met prosecutrix in January, 2013 during official meeting and then, met several times for business reasons. On persuasion of accused, friendship developed. Prosecutrix disclosed him that she was a widow. Taking advantage of the same, accused gave her offer of marriage and then they co-habited with each other. FIR went on to disclose how deceit was practised by the accused by talking to his family members in his regional language giving an impression to prosecutrix that he had informed them about the prosecutrix. It was revealed only on 25th August, 2013, when he told her sister that a girl was staying with him for the last several months and insisting for marriage which he never was interested in. He also left the place

where he was staying taking all belongings and when prosecutrix lodged a missing report, then he informed that he had gone to his relative's house in South India. Petitioner has placed on record a CD and conversation recorded by him. However, from the same, no inference can be drawn as to what transpired before or after the time of footage, more particularly, when it was the accused himself who had recorded the conversation.

12. Keeping in view the seriousness of the allegations, coupled with the fact that the charge sheet has not yet been submitted, at this stage, accused is not entitled to be released on bail.

13. The application is accordingly dismissed.

14. Copy of this order be given *dasti*.

**SUNITA GUPTA
(JUDGE)**

NOVEMBER 26, 2013

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