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IN THE HIGH COURT OF DELHI AT NEW DELHI

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BAIL APPLN. 1944/2013

SAURABH JAIN

..... Petitioner

Through

Mr. Manoj Taneja and Mr. Arjun Sanjay, Advocates

versus

STATE NCT OF DELHI

..... Respondent

Through

**Ms. Aashaa Tiwari, APP
SI Pinki Rana, PS Shakarpur.**

CORAM:

HON'BLE MS. JUSTICE SUNITA GUPTA

ORDER

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31.10.2013

1. This is a petition under Section 438 Cr.P.C. r/w Section 482 Cr.P.C. moved by the petitioner for grant of anticipatory bail in case FIR 874/2013 u/s 376/313/328/506 IPC registered with PS Shakarpur, Delhi.

2. The FIR in the instant case was registered on 16th September, 2013 on the complaint of Ms. Babandeep Kaur wherein she alleged that she is 24 years of age. In July, 2004, she came in contact with the petitioner outside the Coffee Home at Nirman Vihar, Delhi and he started showing friendly to her and he then took her at his home where her friend was sitting with her boy friend. Her boy friend was Saurabh's cousin. On 20th July, 2004, the petitioner proposed her and made tall claims and allurement to her about him and his family and

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showed a very rosy picture. He told her that he is a graduate and has done B.Pharm and has his own Gym and also has wholesale shop. However, all these claims made by him were found to be fake at a very later stage. She had fallen in trap of the petitioner and accepted his proposal. They became good friends which continued smoothly till 2010. In the year 2010, Saurabh Jain started compelling her to have physical relations which she refused. But one day he called her at his home and his mother was in another room. Thereafter he gave some drink to her. After taking the same, she became subconscious and he committed forceful rape upon her. For 4-5 days she did not talk to him but then he stated that he will marry her very soon and he succeeded in misguiding her so as to escape from clutches of law. However, it was only a ploy by the petitioner so that she may not complain to police and her family members. He started avoiding about the marriage and thereafter he committed rape number of times against her wishes and consent. In August, 2012, he asked her to make arrangement of Rs.5 lacs on the pretext of construction of his house and virtually compelled her to bring the said money. Therefore, she gave all cash, some of her jewellery and all her savings to him with the hope that he will marry her. Despite that, he did not fulfil his words and continued to exploit her sexually. In March, 2013, she was shocked to learn that she was pregnant. She informed the petitioner about her pregnancy who asked her for abortion, which was declined, however, he sent her to Navjeevan Nursing Home where it was confirmed that she was pregnant. Thereafter, he pretended that he suffered heart attack on 15th March, 2013 and was

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admitted in Max Balaji Hospital and on 20th March, 2013 he was discharged. The petitioner sent her to Smart Medicos at Jagat Puri near Shri Ram Hospital for buying some abortion tablets. She took those tablets under his pressure. He took her to lady doctor in Walia Nursing Home, who examined her because there was no action or reaction of that tablet. She got done ultrasound and all. There he spent all the money for the same. After that, he did not talk to her for some days and when he again took her to the doctor and promised that in the year 2013 he will marry her. Thereafter, petitioner took her to his house in order to meet his mother but her mother told her that she will allow the petitioner to marry her only if her family will give Honda City Car, home appliances, Rs.10 lac in cash and marriage function in Le-Meridien. She was shocked to learn about such demands as her parents cannot meet such demand of dowry. Thereafter, she came to know that the petitioner has not only maintained illicit relations with other 2-3 girls and have ruined their lives. On 8th September, 2013, she met a girl namely, Sweety, who was also been betrayed by the petitioner in the same manner. She along with that girl went to the house of the petitioner where petitioner and his mother threatened her and that girl and asked them to go away and that police cannot do anything. In this way, the petitioner has committed serious crimes by committing rape on her on many occasions against her wishes and consent and by giving false and wrong promises of marriage, extorted money to the extent of Rs.5 lacs, jewellery and all her savings and ruined her life. Now they are threatening to kill her in case she raises her voice or make any complaint to the police.

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3. It is submitted by the learned counsel for the petitioner that there is long and unexplained delay in making the complaint by the complainant to the police. The complaint has been filed after a long and belated period of more than three years and no reasonable explanation has been given by the complainant for making such belated complaint. On the basis of same and identical allegations, mother of the petitioner has been granted anticipatory bail while the application moved by the petitioner was dismissed. It was further submitted that the complainant has not given her complete address in the complaint and the allegations are vague inasmuch as no specific date, time or month of the year 2010 has been stated by the complainant. It is also improbable that in the presence of mother of the petitioner, petitioner would have audacity to rape the complainant. It was submitted that there was non-compatibility between the two and due to inter-caste/inter-religion, the girl being Sikh and the boy being Jain, the marriage between the two was not possible by their families. This fact was known to their families. However, the friendly relationship continued being voluntary and consensual. However, due to all these problems and tensions, the petitioner, a young boy, suffered a massive heart attack/stroke and was admitted at Max Super Speciality Hospital, IP Extn. Patparganj, Delhi on 15th March, 2013 and he was discharged on 19th March, 2013. His angioplasty was done and stent to LAD was done. It was submitted that her statement under Section 164 Cr. P.C. was recorded after a long period of more than ten days from the date of registration of the FIR and there are various discrepancies in the complaint and the Statement under

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Section 164 Cr. P.C. The parties were known to each other and had become friends over a period of time. Both were adults and have consensual relationship, however, the complaint was lodge only when the relationship became sore. The fact that they were having good relation stands confirmed from the photographs and the SMSs sent by her to the petitioner on his mobile phone on regular basis.

4. Reliance was placed on *Jagdish Nautiyal Vs. State*, 2012 (1) JCC 311 DHC; *Rohit Chauhan Vs. State*, 2013 IV AD (CrI.) DHC 224; *Deepak Gulati Vs. State of Haryana*, 2013 (IV) AD (CrI.) 21 SC; *KP Thimmappa Gowda Vs. State of Karnataka*, 2011 (2) Crimes (SC) 140; *Rajesh Patel Vs. State of Jharkhand*, 2013 (2) JCC 1260; *Sajid @ Salman Vs. State*, 2013 (2) JCC 808; *Vikash Vs. The State of Delhi*, 2007 (3) JCC 2336; *Ashutosh Tiwari Vs. State NCT of Delhi*, 2009 (1) JCC 105; *Brij Mohan Verma Vs. State*, 2008 (2) JCC 931 for submitting that the petitioner has roots in the society. Co-accused has been released on bail. There are no chances of his absconding. He is ready to join investigation. As such, he be released on bail.

5. The application is opposed by learned Public Prosecutor for the State on the ground that the allegations against the petitioner are serious in nature. In her statement recorded u/s 164 Cr.P.C., she reiterated the averments made in the complaint. The petitioner cannot claim parity with co-accused who has been released on anticipatory bail. Investigation is at threshold, as such, accused is not entitled to be released on anticipatory bail.

6. Much emphasis has been laid by the learned counsel for the



petitioner for submitting that although the complainant was known to the petitioner since the year 2010, however, the FIR has been lodged after a lapse of 3½ years and for such belated FIR, there is no satisfactory explanation.

7. A perusal of FIR goes to show that the allegations are running from the period 2010 till 2013 and, therefore, it cannot be said that it was a solitary incident which might have taken place in the year 2010 for which FIR is being registered in the year 2013. In *Karthi @ Karthick Vs. State*, 2013 (7) SCALE 777 it was observed that as long as commitment of marriage subsisted, the relationship between the parties cannot be described as constituting the offence of rape u/s 376 IPC. It is only after the accused declined to marry that a different dimension is attached to the physical relationship. In that case, relationship continued for six months and when accused declined to marry complainant then complaint was lodged. It was observed that in the facts and circumstances of the case, it is not possible to hold that any doubt can be said to have been created in the version of the prosecution merely on account of delay in the registration of FIR.

8. Furthermore, although, it is true that both the petitioner and the complainant were adults and as per the averments made in the FIR, they were having friendly relationship which continued till the year 2013. According to the petitioner, the relations were consensual whereas according to the complainant, it was on the assurance of marrying her. This aspect of the matter will require to be seen during trial of the case.

9. Moreover, it is the case of the complainant that she conceived

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and it was on the insistence of the petitioner that she was forced to abort. Furthermore, as per the averments made in her statement recorded under Section 164 Cr. P.C., it was the complainant who got the petitioner admitted in hospital for the second time and at that time, the petitioner introduced the complainant as his wife to the hospital staff. Thereafter, when he was discharged from the hospital he tried to avoid her, although he was talking to her. His brother-in-law persuaded his mother to get their marriage solemnized on which she told him that he will not have any share in the property and they will have to live somewhere else. His mother called her and told her that it will be an arranged marriage but she demanded a new Honda City car, 10 lacs cash, function in Le-Meridien and all house appliances despite the fact that she was aware that her family member will not spend any money and she had to do everything of her own. As such, she returned back. Thereafter, when the petitioner met her she informed him about the demands made by his mother whereupon he told her that he was receiving matches who can spend Rs.8 to 10 crores and, as such, she has to make arrangements or else she may demand her share in the property from her parents. On 8th September, 2013, she came to know that she is not the only girl in his life and there are many others. On 8th September, 2013, she went to the house of a girl who confirmed about her relations with the petitioner. Both of them went to the house of petitioner and he became shocked on seeing both of them. Thereafter, she and that girl slapped the petitioner and then made a call to the police. Police came, however, the girl left the place by saying that the petitioner and his family will

bribe the police officials and as such, she does not want to involve herself in court cases. She also returned back to her house next day. Again, she went to the office of brother-in-law of the petitioner and wanted to meet the petitioner whereupon he informed her that petitioner has been sent outside Delhi by his mother and his mother was adamant in not getting them married, may be petitioner have to remain in jail. Thereafter, she has been receiving continuous threats for withdrawal of the complaint. As such, the allegations are very serious in nature.

10. The various authorities relied upon by the learned counsel for the petitioner are on the factual matrix of the respective cases. Each and every case has to be decided on the basis of allegations made in the respective cases and, therefore, the petitioner cannot get benefit from them. Similarly, the fact that co-accused has been granted anticipatory bail has no bearing on the application moved by the petitioner against whom there are allegations of commission of rape, forcing the complainant to abort the child, forcing her to part with Rs.5 lacs, jewellery and other savings. As such, the petitioner cannot claim parity with that of co-accused.

11. As observed by the Hon'ble Supreme Court in *Pokar Ram v. State of Rajasthan*, AIR 1985 SC 969, relevant considerations, governing the Court's decision in granting anticipatory bail under Section 438 of the Code of Criminal Procedure, are materially different from those which apply while considering application for bail by a person, who is arrested in the course of investigation or by a person who is convicted and who seeks bail during pendency of the

appeal. The power of the Court under Section 438 of the Code of Criminal Procedure being somewhat extraordinary in character should normally be used only where it appears that the petitioner before the Court may have been implicated in a false case and there are reasonable grounds to believe that he has not likely to otherwise misuse the liberty of bail, if granted to him. The offence under Section 376 of IPC being a serious offence, the Court ought to be circumspect while considering request of an accused in a case of this nature for grant of anticipatory bail. The facts and circumstances of this case do not make out an appropriate case for exercise of discretion under Section 438 of the Code of Criminal Procedure. In fact, the Status Report filed by the State, shows that the petitioner has been absconding and has not surrendered, despite raids at the places of his relatives. The application of the petitioner for grant of anticipatory bail has already been rejected by the Court of Sessions. A person, who is absconding and evading process of law, is not entitled to grant of anticipatory bail save in exceptional case justifying departure from this principal. Unless there are peculiar and special facts and circumstances in a given case, the Court would not be justified in extending the benefit of anticipatory bail to such a person.

12. In *Jagtar Singh v. Satendra Kaur*, 2002 (6) Scale, the Hon'ble Supreme Court observed that normally when the accused are absconding, there is no question of granting anticipatory bail or regular bail to them. As held by the Hon'ble Supreme Court in *State of Maharashtra v. Mohd. Sajid Hussain*, 2008 (1) SCC (CrL.) 176, one of the factors, while considering the application for grant of

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anticipatory bail, is the possibility of the applicant, if granted bail, fleeing from justice. If a person is absconding, despite raids conducted by the police and rejection of his petition for grant of anticipatory bail by the Court of Sessions, the prosecution may not be unjustified in saying that anticipatory bail ought not to be granted to such a person who may even flee from justice by not attending the trial. In the absence of exceptional and peculiar circumstances, the Court, therefore, should not grant anticipatory bail to a person, who is evading the process of law by continuing to remain absconding.

13. Keeping in view the totality of the facts and circumstances of the case, it is not a case for grant of anticipatory bail.

14. The application is accordingly dismissed.

15. It is clarified that any observation made in this order shall not affect the decision of the case at any stage of the trial or other proceedings.

Sunita Gupta
SUNITA GUPTA, J

OCTOBER 31, 2013

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