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

+ BAIL APPLN. 980/2015

MANSHER SINGH GHUMAN

..... Petitioner

Through:

Mr.Salman Khurshid, Sr.Advocate
alongwith Ms.Neela Gokhale, Mr.Nikhil
and Mr.Ankit Shukla, Advocates

versus

STATE OF NCT OF DELHI

..... Respondent

Through:

Mr.O.P.Saxena, APP for the State
alongwith WSI Mukesh from police
station District Investigation Unit, Delhi.
Mr.Yash Wardhan Tiwari, Advocate for
complainant.

+ BAIL APPLN. 982/2015

MANSHER SINGH GHUMAN

..... Petitioner

Through:

Mr.Salman Khurshid, Sr.Advocate
alongwith Ms.Neela Gokhale, Mr.Nikhil
and Mr.Ankit Shukla, Advocates

versus

STATE OF NCT OF DELHI

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alongwith WSI Mukesh from police
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Mr.Yash Wardhan Tiwari, Advocate for
complainant.

CORAM:

HON'BLE MS. JUSTICE SUNITA GUPTA

ORDER

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28.05.2015

1. Vide this common order I shall dispose of two bail applications bearing No.980/2015 and 982/2015 filed by the petitioner.

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2. In bail appln. No.980/2015 the petitioner prays for pre-arrest bail under Section 438 read with 482 Cr.P.C in case FIR No. 95/2015 under Section 376/506 IPC registered at police station Vasant Vihar, New Delhi. This FIR was registered on the basis of a complaint made by prosecutrix alleging therein that in the morning of 25.01.2015 at 8.30 am she got a call from the petitioner who told her that he wanted to assign her some security work and called her for a meeting at 40 Poorvi Marg, Vasant Vihar, New Delhi. When she reached there around 11.00 am, she found that there was no meeting and no friend of the complainant was there. Only petitioner was there and he was sniffing some white powder. He offered her drink but she refused to take it. She enquired about the meeting and the accused told her that his friend would come and asked her to wait. She told him that she could not wait long as she had small kids but petitioner forced her to stay and forced himself upon her. She shouted and asked him to let her go but he forcibly had sex with her for about one hour. As he was having drugs, he fell unconscious. At that time she ran away from that place.

3. In bail appln.982/2015 the petitioner seeks anticipatory bail in case FIR No.590/2015 under Section 354/506 IPC police station Vasant Vihar, New Delhi which was registered on the basis of a complaint made by the same prosecutrix alleging inter alia that on 05.05.2015 while she was entering in the police station the accused Mansher Singh Ghuman alongwith one man in turban came and his associate threatened her not to enter in the police station and accused threatened her to kill if the previous case i.e., FIR No. 95/2015 got transferred from police station Vasant Vihar to another. He further told her that nobody knows his whereabouts and police is in his control and nobody can catch him. His associate misbehaved with her and asked her not to leave her children alone at home till she withdraws her complaint. She dialled 100 number. Suddenly, one

unknown person holding a briefcase pulled her jeans from her waist. She gave a complaint and made PCR calls and gave her written complaint on the basis of which this case was registered.

4. Learned Senior counsel for the petitioner has prayed for pre-arrest bail to the petitioner mainly on the ground that the petitioner has joined investigation at least on six occasions i.e., 26.01.2015, 27.01.2015, 02.04.2015, 09.04.2015, 11.04.2015 and 05.05.2015. During the course of investigation, the petitioner has surrendered his passport, his mobile phone and all the relevant documents. As per the case of the prosecutrix she was called by the petitioner on 40 Poorvi Marg, Vasant Vihar, New Delhi for some meeting where she was subjected to forcible rape. The allegations are falsified by the fact that the house 40 Poorvi Marg belong to Anil Malhotra, where other persons were also present including Mr. Malhotra and his servant. Moreover, if any such untoward incident had taken place, the complainant would not have sent an e-mail on the same day forwarding her proposal for work to the petitioner. It is further submitted that various SMSs placed on record shows that the complainant and petitioner were close to each other. At no point of time the petitioner absconded. Despite the fact that the petitioner himself appeared before the Investigating Officer of the case on 26.01.2015 yet his non-bailable warrants were taken which were never executed. The petitioner is an American citizen. He has already surrendered his passport. That being so, there is no chance of his fleeing from the country. He has given his permanent address of Chandigarh belonging to his father where he visits. An affidavit of his father has also been filed to show that the relation between the petitioner and his father are not strained and the petitioner visits him. On 05.05.2015 the petitioner had gone to police station to lodge his complaint whereupon another FIR was foisted on him. Since the petitioner has already joined investigation and is

further ready and willing to join the same, he be granted anticipatory bail.

5. The application is vehemently opposed by learned Additional Public Prosecutor for the State as well as complainant duly assisted by her counsel. It is submitted by Mr.O.P.Saxena, learned Additional Public Prosecutor for the State that after the registration of FIR on the basis of complaint made by the prosecutrix, house No.40 Poorvi Marg, Vasant Vihar, New Delhi was visited where accused was not found present but Anil Malhotra, owner of the house, was present who assured to produce petitioner to the police station on his return. On 26.01.2015 Anil Malhotra produced the petitioner in the police station for investigation. During investigation, it was revealed that accused is a citizen of U.S.A. Anil Malhotra assured that he will bring him for further investigation as and when required. Statement of prosecutrix under Section 164 Cr.P.C could not be recorded on that day. On 27.01.2015 her statement was recorded under Section 164 Cr.P.C in which she reiterated her statement as mentioned in the FIR. Efforts were made to trace the accused but accused absconded and Anil Malhotra who was found present at his house stated that accused was not in the house and he does not know where he has gone but he will bring him to police station on his arrival. Despite sincere efforts, he could not be traced. As such, on 29.01.2015 intimation was given to U.S Embassy and LOC got opened through FRRO against the petitioner. On 31.01.2015 non-bailable warrants were taken from the Court. While referring to the status report, it was further submitted that the investigation revealed that complainant came in contact with the accused for business purpose in the year 2013 and also visited Pune for business. In this regard mails and telephonic recorded conversation provided by the victim were taken on record. It is further submitted that except for business relation, there was no other relationship between the complainant and the accused.

The complainant had gone to meet the accused for specific business proposal and despite resistance, she was raped by the accused. Subsequent to the registration of the FIR, the complainant was threatened by Anil Malhotra and Bala to withdraw the case. As such, Section 506 IPC was added in the case. Efforts were made to execute the non-bailable warrants, however, he could not be traced. Enquiry revealed that the elder brother of the accused Sandeep Singh Ghumman is residing on the ground floor and his uncle Mr. Jagjeet Singh reside on the first floor of property No. 3386, Sector 27-D, Chandigarh. The ground floor was locked and the uncle of the accused informed that accused has not visited the house for very long time. Moreover, they have no contact with him. He further stated that the petitioner has no connection with his family and is not a resident of that address. It is submitted that the allegations are very serious in nature. The accused has no permanent residence in Delhi as well as in Chandigarh. He is an NRI and there are strong chances of his fleeing/jumping bail. Possibility of threatening the prosecution witnesses by the accused is reflected from the fact that another FIR under Section 354/506/34 IPC is registered against him. His custodial interrogation is required, as such, he is not entitled to be released on bail.

6. Learned counsel for the complainant also vehemently opposed the application on the ground that immediately after the incident, the FIR was got registered by the prosecutrix on the same day. Statement of victim was recorded on 27.01.2015. Since then accused has been absconding. It is further submitted that the petitioner is an influential person which is reflected from the fact that despite registration of the FIR for such a heinous offence which is non-bailable one and accused went to the police station on 26.01.2015, he was not arrested by the police. Even thereafter, no sincere efforts were made by the police to arrest him with the result, the

complainant had to move application for transfer of the case to Special Cell Women and vide order dated 30.04.2015, the investigation of the case was transferred from police station Vasant Vihar to DIU/SD for further investigation. At no point of time the accused was called in the police station. He went of his own after he was granted interim relief by the Trial Court due to lawyers strike. The petitioner never joined investigation. On request of police he had only submitted documents through his lawyer during pendency of the application in Sessions Court. Reference was made to e-mail dated 08.03.2015 sent by Anil Malhotra where he admitted factum of commission of rape upon the complainant by Matt (petitioner herein) but asked her to withdraw the case as petitioner is influential and can do anything Section 506 Cr.P.C was also added. As regards e-mail sent by the complainant to petitioner on same day, it was submitted that it was sent in the morning and due to some technical reasons it might have reached the petitioner after the incident. Further, the petitioner has misused the liberty of interim protection by committing another serious non-bailable offence for which another FIR 590/2015 was registered. For reasons best known to the accused, he has not disclosed the name of 'Sikhman' who had accompanied him to the police station and threatened the complainant. It is submitted that the petitioner is receiving threats for withdrawal of the complaint. Petitioner does not deserve any relief in view of the seriousness of the allegations otherwise that will give a wrong message to the society. Furthermore, the petitioner does not have fix place of residence in India as he is an American citizen. As per the affidavit filed by her father, the petitioner lastly visited him in August, 2014. Therefore, there is every possibility of his jumping the bail.

7. Before advertng to the facts of this case, this Court must focus its attention to the principles and parameters governing the grant of pre-arrest

bail orders under Section 438 of the Code. In *Gurbaksh Singh Sibbia Vs. State of Punjab*, 1980(2) SCC 565, the Apex Court had examined in detail the principles governing the grant of pre-arrest bail and had laid down that the considerations relevant for bail under Sections 438 and 439 of the Code are same. In para-21 of the said judgment, however, their Lordships had highlighted the need of exercising wise judicial discretion in the matter of grant of pre-arrest bail and had observed:-

"A wise exercise of judicial power inevitably takes care of the evil consequences which are likely to flow out of its intemperate use. Every kind of judicial discretion, whatever may be the nature of the matter in regard to which it is required to be exercised, has to be used with due care and caution. In fact, an awareness of the context in which the discretion is required to be exercised and of the reasonably foreseeable, consequences of its use, is the hallmark of a prudent exercise of judicial discretion."

8. In *Pokar Ram Vs. State of Rajasthan & Others*, AIR 1985 SC 969, the Apex Court had again considered the powers of the Courts under Section 438 of the Code. In para-11 of the judgment, it was held that status in life, affluence or otherwise were hardly relevant considerations while examining the request for grant of anticipatory bail. It was also observed that anticipatory bail to some extent intrudes in the sphere of investigation of crime and the Courts must be cautious and circumspect in exercising this power of a discretionary nature. In para-13 of the same judgment, it was also observed that grant of anticipatory bail in serious cases may shake the faith of public in administration of justice.

9. Learned counsel for the petitioner relied upon *Siddharam Satlingappa Mhetre vs. State of Maharashtra & Others* AIR 2011 SC 312 in which following factors and parameters were laid down for consideration while dealing with the anticipatory bail:-

- "i. The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;
- ii. The antecedents of the applicant including the fact as to whether the

accused has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence;

- iii. *The possibility of the applicant to flee from justice;*
- iv. *The possibility of the accused's likelihood to repeat similar or the other offences.*
- v. *Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her.*
- vi. *Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people.*
- vii. *The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role of the accused in the case. The cases in which accused is implicated with the help of sections 34 and 149 of the Indian Penal Code, the court should consider with even greater care and caution because over implication in the cases is a matter of common knowledge and concern;*
- viii. *While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors namely, no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused.*
- ix. *The court to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;*
- x. *Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail."*

10. Coming to the facts of the case in hand, the FIR No 95/2015 has been registered under Section 376 IPC by the prosecutrix on the allegations of rape. ***In Rohit Chauhan vs. State NCT of Delhi 2013 (4) JCC 2801*** relied upon by learned counsel for the petitioner, a Single Judge of this Court referred to the observations made by this Court in another bail appln.No.1760/2012 as under:-

" Rape is one of the most barbaric and heinous crimes not only against the victim of the rape but also against the society as a whole. The cases of rape, gang rape and digital rape are on increase and perpetrators of this inhuman and brutal crime are worse than even the beasts are deserve to be dealt with a heavy hand. The entire country is seriously debating this issue and there are proposals coming forth that death penalty should be the answer to deal with the accused involved in such heinous crime. Having said this, I am also constrained to observe here that no one should be allowed to trivialise the gravity of offence by misusing

the same as a weapon for vengeance or vendetta.

11. It is appalling to seek that rape rears its ugly facade almost every day. As per the National Crime Record Bureau, in India, a rape is committed every 20 minutes. Rape being the fastest growing crime is undoubtedly one of the most deplorable, belligerent and atrocious act committed against the dignity of a woman. Rape has been held to be even more serious than murder which not only destroys the woman physically but also shatters her inner self by destroying her each living moment emotionally and psychologically.

12. Rape is a crime against one's mind, psyche and reputation. Rape leaves a permanent scar on the life of the victim and it becomes horrendous for the victim of rape to lead a dignified and well respected life in the society. It is very unfortunate that there is a high increase in the rape instances and ravenous maniacs are not even sparing the girls of a very tender age. Some of the recent rape cases have been so horrifying that the entire nation protested to condemn these barbaric acts and raised a voice to curb the said menace by inflicting more severe punishment. The Government also promptly appointed Justice J.S.Verma Committee to review laws on crimes against women, which recommended certain dramatic changes in the Criminal law relating to offences against women."

11. It was also noted that there is manifold increase in the crime concerning rapes, however, on the factual matrix of that case that the complainant and the petitioner had married, there was delay in lodging FIR and while observing that every case is to be dealt with based on its individual factual matrix and no straight principle or straight jacket formula can be applied specifically while dealing with bail matters where only prima facie view can be taken to appreciate the facts in a given case, the petitioner was granted relief of anticipatory bail.

12. As per the case of the complainant, she had joined a company recently which deals in security guards and manpower. On 25.01.2015 at about 8.30 am she received a call from the petitioner saying that he wants to assign a security job of his friend's company and she should come for the meeting at 40 Poorvi Marg, Vasant Vihar, New Delhi. As such, in order to have business she went to the place of meeting and reached there at about 11.00

am but did not find anyone else except the petitioner who was sniffing a white powder. A drink offered by him was refused by her. Thereafter he forcibly had sex with her. On the same day, she lodged the complaint with the police. The factum of visit of prosecutrix at 40 Poorvi Marg, Vasant Vihar, New Delhi in the house of Anil Malhotra is not even disputed by the petitioner. Statement of Anil Malhotra in this regard has also been recorded by the Investigating Officer of the case who has stated that on noticing that the complainant has come he asked his servant to offer her tea etc. When the alleged incident took place there was nobody else in the room except the complainant and the petitioner. On the same day, the FIR was registered. When the complainant was taken to Safdarjung Hospital for her medical examination, she gave the same history to the doctor. On 27.01.2015 her statement under Section 164 Cr.P.C was recorded by learned Metropolitan Magistrate wherein she reiterated the averments made in her complaint.

13. Needless to say, the allegations are serious in nature and the offence under Section 376 IPC is non-bailable one. It is a matter of record that on 26.01.2015 the petitioner visited police station and his passport was seized. He was taken to All India Institute of Medical Sciences where his medical examination was done. Despite the fact that serious allegations were levelled against him and he was with the police but he was not arrested for which no explanation is forthcoming. In this background, the allegations of the complainant that since petitioner is an influential person therefore police was not taking any steps to arrest him cannot be brushed aside. The complainant approached DCP South vide her complaint dated 21.04.2015 for transfer of her case to Special Cell Women and thereafter vide order dated 30.04.2015 investigation was transferred from police station Vasant

Vihar to DIU/SD on 30.04.2015.

14. It is the case of prosecution that after 27.01.2015 the petitioner was not available despite efforts. Anil Malhotra also could not produce him and gave his statement that from 28.01.2015 petitioner is not in touch with him. Therefore, his LOC was got opened. His non-bailable warrants were also obtained but without any success. After the grant of interim protection in the application for anticipatory bail filed by him before the Session Court, petitioner appeared of his own in the police station on few dates. But that itself is not sufficient as the Court cannot ignore the gravity and seriousness of the allegations levelled against the petitioner.

15. Further, as per the case of prosecution Section 506 IPC was added in the initial FIR as the complainant was threatened by Anil Malhotra and Bala to withdraw the case. Reference was made to e-mail dated 08.03.2015 sent by Anil Malhotra to the complainant where while feeling sorry for whatever happened and knowing that petitioner raped her but he asked her to settle the matter as she was aware that they are influential people and can do anything so she should withdraw her case. It is stated that IP address of Anil Malhotra is being verified through cyber cell and report is still awaited.

16. Not only that, on 05.05.2015 complainant had gone to police station to enquire about the investigation which has been transferred to Malviya Nagar, DIU. It is alleged that at that time the petitioner alongwith a Sikh gentleman came and the complainant was again asked to withdraw the complaint and was also threatened by the Sikh gentleman not to leave her children alone at the house unless she withdraws the complaint. Not only that, she was also sexually assaulted. Therefore, FIR No.590/2015 was registered.

17. Admittedly, the petitioner is an American citizen. During investigation his address 3386, Sector 27D, Chandigarh came to light. According to the petitioner, this is the address of his father where whenever he comes to India resides. For the purpose of execution of non-bailable warrants, the police officials visited this address and it was found that elder brother of accused Sandeep Singh Ghuman was residing on the ground floor whereas his uncle Jagjeet Singh Ghuman resides on the first floor. The ground floor was found locked and uncle of accused informed that accused Mansher Singh Ghuman alias Matt has not visited the house for a long time. Moreover, they have no contact with him and does not know his whereabouts. He further stated that Mansher Singh Ghuman has no connection with his family and he is not a resident of this address. The petitioner, however, filed an affidavit of his father stating therein that he lastly visited him in August, 2014. Father of the petitioner appeared in the Court and stated that the petitioner visited him in August, 2014 when he was to be operated upon and besides that he also visited him in December, 2014.

18. Keeping in view the totality of facts and circumstances of the case coupled with the fact that the allegations against the petitioner are grave and serious in nature and the investigation is at its threshold, I do not deem it appropriate to release the petitioner on anticipatory bail. As such, applications are dismissed. It is, however, clarified that nothing stated herein shall tantamount to an expression of opinion on merits of the case.

Order dasti.

Sunita Gupta
SUNITA GUPTA, J

MAY 28, 2015
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