

\$~

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ BAIL APPLN. 864/2016

HARVINDER PAL SINGH

..... Petitioner

Through: Mr.S.P.Singh Choudhary with
Mr.Y.R.Sharma, Advocates

versus

STATE

..... Respondent

Through: Mr.Hirein Sharma, Additional Public
Prosecutor for the State.
Complainant in person.

CORAM:

HON'BLE MS. JUSTICE SUNITA GUPTA

ORDER

%

11.07.2016

1. Apprehending his arrest in case FIR No. 161/2016, Police Station Khyala under Sections 376/354(C)/506 IPC, the present application under Section 438 Cr.P.C has been filed by the petitioner.
2. The FIR in the instant case was registered on the basis of a complaint made by prosecutrix '(M)' wherein she alleged that the petitioner is the friend of her brother Prince. He met her on 10.01.2015 and told her to help her in the dispute which was going on between her and her husband and on that pretext started making advances towards her and developed friendship. He took a sum of Rs.50,000/- from her but instead of repaying the same, he started taking more money from her. He promised to marry her and on that basis insisted her to take divorce as such, she took divorce from her husband. She further alleged that the petitioner took Rs.3,00,000/- from her

which she had received as alimony besides other gold articles. He established physical relations with her on the pretext of marrying her and during that process, he made some Video Clips and took her obscene photographs and thereafter, started black-mailing, threatening and extorting her that he will circulate the said Video Clips on Internet and make her photographs public. On one occasion, he gave her a diamond necklace and took Rs. 3,50,000/- from her. Later on, she came to know that the said necklace was stolen property. He further threatened her that in case, she lodged complaint with the police, he will get her brother murdered through his brother who is lodged in jail in a case of robbery.

3. Learned counsel for the petitioner submits that the complaint lodged by the prosecutrix is false. The prosecutrix had threatened him to falsely implicate in some case as such, he filed complaints dated 21.12.2015 and 17.02.2016. The complainant is much older than the petitioner. She herself made advances towards the petitioner. She was claiming herself to be unmarried but during intimacy with her, petitioner came to know that she has filed divorce petition against her husband. Several photographs were filed to show the intimacy between the petitioner and the complainant. It is submitted that the physical relation is consensual. Learned counsel for the petitioner further submits that the complainant borrowed a sum of Rs.2,50,000/- from the petitioner and gave a post dated cheque dated 29.02.2016 of Rs.2,50,000/-. The cheque got dishonoured and thereafter, this false complaint has been lodged so that the petitioner may not take steps for prosecuting her under Section 138 Negotiable Instrument Act. It is submitted that the petitioner is ready to join the investigation as such, he be released on bail. Reliance is placed on *Arif Iqbal vs. State* 2009 (164) DLT

157; *Uday vs. State of Karnataka* (2003) 4 Supreme Court Cases 46; *Jagdish Nautiyal vs. State* 2013 (1) JCC 311; *Vikas Rana vs. State* 2015 (2) AD (Delhi) 718; *Vikash vs. The State of Delhi* 2007 (3) JCC 2336 and *Ashutosh Tiwari vs. State NCT of Delhi* 2009 (1) JCC 105.

4. The application is opposed by the learned Public Prosecutor for the State on the ground that the petitioner taking advantage of the strained relations between the complainant and her husband developed friendship and established physical relations with her on the false pretext of marriage. In view of the assurance given by the petitioner that he will marry her, the complainant took divorce from her husband, however, the petitioner exploited her and took hefty amount from her. Once she paid Rs.50,000/- then Rs.3,50,000/- but the amount was never returned. He took her obscene photographs and threatened and extorted money and subsequently transferred her Video Clips on the mobile phone of his friend Harminder Singh whose statement under Section 161 Cr.P.C was recorded , wherein, he stated that the petitioner had sent obscene pictures of the prosecutrix to him before the registration of FIR. On checking mobile phone of Harminder Singh, Video Clips of the complainant were found therein. The mobile phone was seized for sending the same to FSL authorities. Further investigation revealed that the petitioner was in possession of a cheque of the complainant which he tried to get encashed by altering/making corrections in the date and amount but the same was dishonoured due to the said alteration/correction. Custodial interrogation of the petitioner is required for recovery of mobile phone and laptop as such, the petitioner is not entitled to be released on bail.

3. In the judgments relied upon by the learned counsel for the petitioner, the bail was granted on the factual matrix of the facts as appearing in those cases. Each and every case has to be decided on the basis of facts involved in the case. The present case is not confined to maintaining physical relations with the complainant on the false promise of marriage but as per the complainant's version, the petitioner also obtained her obscene photographs and threatened to circulate the same and in fact he did so while transferring her Video Clips on the mobile phone of his friend Harinder Singh. Recovery of his mobile phone and laptop is also required. Under the circumstances keeping in view the peculiar facts and circumstances, I do not deem it appropriate to release the accused on anticipatory bail.

4. The application is accordingly dismissed. It is further clarified that the observations made herein are confined to the disposal of this application and same will have no bearing on merits of the case.

SUNITA GUPTA, J

JULY 11, 2016