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

+ **BAIL APPLN. 951/2016**

JIWAN KANT JAIN

..... Petitioner

**Through: Mr.Annop J.Bhambhai, Sr.Advocate
with Mr.Bharat Sharma, Mr.Aditya
Jain and Ms.Mansi Kaushik,
Advocates**

versus

STATE

..... Respondent

**Through: Mr.Akshai Malik, APP with SI Usha
Yadav, Police Station Safdarjung
Enclave.**

CORAM:

HON'BLE MS. JUSTICE SUNITA GUPTA

ORDER

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30.05.2016

1. Apprehending his arrest in case FIR No.23/2016 under Section 376/354A/323/506/509/328/34 IPC registered at Police Station Safdarjung Enclave present application has been filed by the petitioner.
2. As per the complaint lodged by the complainant, she had joined the company of the petitioner. Since there was no space, as such, she had to do all the work of the company from the house of the petitioner. One day petitioner called her to his house where he offered her cold drink containing some intoxicant. Although she was conscious but was not able to stand and petitioner committed rape on her four times. Subsequently, he called her at Safdarjung Club where she was threatened to make her video viral in case she demanded salary.
3. Learned senior advocate for the petitioner submits that the petitioner is a senior citizen of about 65 years of age and is suffering from diabetes

mellitus for last four years. He is married and has three children and is engaged in business at Delhi. The present case on the basis of vague and false allegations has been registered against the petitioner. In fact, the complainant joined the business concern of the petitioner. She started raising illegitimate demands under the garb of unpaid salary. On 24.12.2015 petitioner paid Rs.85,000/- to her towards settlement of her dues which included a cheque of Rs.35,000/-. The firm was having its registered office/principal place of business at UG17, Daryacha, 39, Hauz Khas Village, New Delhi and it is absolutely not imaginable that when a firm has been constituted at a specific address forming the place of business then how any business would allegedly be transacted from home. Counsel further submits that as per the allegations in the FIR, there are two sets of events, one is the event of alleged rape and the other is alleged occurrence in Safdarjung Club on 04.01.2016 when the complainant asked the petitioner for meeting, alleging the cheque of Rs.35,000/- to be wrongly issued. In fact, the meeting was sought by the complainant to extort Rs.3 lacs from the petitioner and when refused by the petitioner, on the very next day, the present FIR was lodged. The present case has been filed by the prosecutrix with ulterior motive just to extort money and to blackmail the petitioner. The petitioner had filed an application for grant of anticipatory bail before learned Additional Sessions Judge. Vide order dated 13.01.2016, he was granted interim protection whereafter the petitioner joined the investigation and also submitted all the documents including mobile phone. Thereafter, the application was dismissed. A settlement was arrived at between the complainant and the petitioner vide compromise dated 24.02.2016 and the complainant herself apprised the police authorities withdrawing the allegations levelled by her against the petitioner. Petitioner even handed over a Hyundai Verna car to the

complainant. On account of change in circumstances, the petitioner filed a second anticipatory bail application. Clarification was sought by learned Additional Sessions Judge regarding the affidavit filed by the complainant. Despite several opportunities, complainant did not appear and ultimately when she appeared, she did not disown or question the settlement and her affidavit. Despite that, the application was dismissed. The petitioner was taken to Safdarjung Hospital for potency test by the Investigating Officer, however, the opinion was given without adopting necessary scientific procedures and tests. The petitioner underwent a potency test at Ganga Ram Hospital and after subjecting the petitioner to a thorough scientific examination and diagnosis, senior urologist of Ganga Ram Hospital certified that the petitioner is impotent not having any significant erection vide his report dated 15.04.2016. That being so, the petitioner could not have indulged in sexual intercourse with the complainant four times, as alleged. Basically, it was a money dispute regarding salary and termination compensation which has already been settled by the petitioner. The allegations are ex-facie false and vague as no date, month or year of the alleged rape is disclosed in the FIR. Under the circumstances, it is submitted that the petitioner has roots in the society, he is a senior citizen, as such, petitioner be granted protection from arrest.

4. Application is opposed by learned Public Prosecutor for the State by submitting that although the petitioner had joined investigation but the allegations are grave and serious in nature. Reference was also made to the MLC conducted by doctor of Safdarjung Hospital whereby it was opined that there was nothing to suggest that the petitioner was not capable of performing sexual intercourse. The alleged compromise by the prosecutrix was under threat. The report of FSL is yet to be received. Under the circumstances, the petitioner is not entitled to the relief, as claimed.

5. Rebutting the submissions of learned Additional Public Prosecutor for the State, learned senior advocate for the petitioner referred to the report submitted by the Investigating Officer of the case before the learned Additional Sessions Judge verifying the compromise entered into by the complainant. Admittedly, no complaint was made thereafter by the complainant that the alleged compromise was under any threat or pressure. Counsel further submits that if the compromise was under threat then why the complainant got the cheque issued by the petitioner encashed which is reflected from the certificate dated 12.04.2016 issued by the Corporation Bank that a sum of Rs.35,000/- has been paid to the complainant from the account of petitioner. As regards the certificate issued by the doctor of Safdarjung Hospital, reliance is placed on the information given to the counsel for the petitioner pursuant to a query made by the petitioner under Right to Information Act that no test for determining potency in a person accused of rape is carried out in Department of Forensic Medicine. Capability or incapability of sexual intercourse is ascertained by physical examination, as such, it is submitted that no scientific test was conducted by the doctor of Sardarjung Hospital whereas the certificate issued by Ganga Ram Hospital was on the basis of scientific tests. As such, there is no cogent ground for not granting the relief to the petitioner. Moreover, State is also not seeking any custodial interrogation of the petitioner. Reliance is placed on ***Bhadresh Bipinbhai Sheth vs. State of Gujarat and Another*** (2016) 1 SCC 152 wherein Hon'ble Supreme Court laid down various principles for grant of anticipatory bail. It is submitted that on testing the touchstone of the principles laid down in this case, the petitioner be granted anticipatory bail.

6. Keeping in view the totality of facts and circumstances of the case, without expressing any opinion on the merits of the case, it is ordered that

in the event of arrest, petitioner be released on bail subject to:

- (i) His executing personal bond in the sum of Rs.25,000/- (Rupees Twenty Five Thousand only) with one surety in the like amount to the satisfaction of the concerned I.O./SHO.
- (ii) He shall join the investigation as and when called for by the I.O.
- (iii) He shall furnish his address as well as his contact number to the Investigating Officer.
- (iv) He shall not threaten or coerce complainant or any prosecution witness.

The application is accordingly disposed of.

Copy of this order be given *dasti* to counsel for the petitioner.

MAY 30, 2016
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SUNITA GUPTA, J