

\$~3

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of hearing and order: 13th June 2016

+

BAIL APPLN. 1228/2016
SHALAINDER UPADHYAY

..... Petitioner

Through: Mr. Barun Sinha and Mr. Pradeep
Desodya, Advocates

versus

GOVT OF NCT DELHI

..... Respondent

Through: Ms. Meenakshi Dahiya, Additional
Public Prosecutor for the State
Mr. Ajay Kumar Jha, Advocate for
complainant

CORAM:
HON'BLE MR. JUSTICE P.S.TEJI

ORDER

%

13.06.2016

P.S.TEJI, J. (Oral)

1. By this second application filed under Section 438 of Cr. P.C., the petitioner seeks anticipatory bail in FIR No. 348/2016 under Section 376/506 of Indian Penal Code registered at Police Station Bindapur, District South West, Delhi.

2. The prosecution case as per the complaint of one Ms. Manisha Chaurasia is that the petitioner used to study with her in NIIT Varanasi

and had friendly relations with her and under the promise of marriage, he made sexual relations with the complainant in September 2007. Complainant did her MBA and started doing a job in Delhi. Accused (petitioner herein) got married on 11th May 2014. The petitioner had prepared obscene and nude videos of complainant at the time of sexual intercourse with her without complainant's knowledge and consent and on the basis thereof, he threatened, blackmailed and continuously raped her. The complainant got engaged and her marriage was fixed for 17th April, 2016 and even after knowing this fact, the petitioner put pressure upon her to break the marriage. It is alleged that the petitioner sent nude photos of complainant to the person she was engaged to be married resulting into their break up.

3. Mr. Ajay Kumar Jha, learned counsel for the petitioner contended that the present FIR has been lodged with malafide intention to harass the petitioner and to break the marriage of the petitioner. Learned counsel for the petitioner further contended that the complainant has lodged false complaint against the petitioner even after being aware of the fact that they were in a relationship with each other since the year 2007 and in support thereof the emails/chats exchanged between the complainant and the petitioner are relied upon.

4. Learned counsel for the petitioner further contended that the complainant was in relationship with the accused for more than 7-8 years and all the acts committed between them were with mutual consent and without any sort of pressure. It is further submitted that

the complainant was aware of the fact that the petitioner got married on 11.05.2014 and even after having the knowledge about the marriage of the accused with some other lady, the complainant chose to keep mum and the complaint has been filed after an inordinate delay.

5. Lastly, it is contended that the complainant, with intent to break the marriage of the petitioner, has levelled wrong and false allegations against the petitioner and lodged the present FIR to extort money from the petitioner.

6. Ms. Meenakshi Dahiya, learned Additional Public Prosecutor for the State filed the status report and vehemently opposed the aforesaid contentions of the petitioner. It is contended on behalf of the State that the petitioner has committed a grave offence of rape with the complainant on the pretext of marriage and prepared obscene videos of her. The bail is opposed on the ground that when the complainant got engaged to another person, the petitioner sent objectionable photographs of the complainant to the person she was engaged to marry which resulted into the breakup of the said marriage. Accordingly, custodial investigation of the petitioner is sought to recover the objectionable videos/photographs/ laptop from the petitioner. It is further submitted that the petitioner is evading his arrest in the present case and has not joined the investigation and NBW has been issued against him on 02.06.2016.

7. I have heard the submissions made on behalf of both the sides

and also gone through the contents of the petition and the record of this case.

8. In ***Prasanta Kumar Sarkar v. Ashis Chatterjee*** (2010) 14 SCC 496, the Hon'ble Supreme Court dealt with the basic principles laid down in catena of judgments on the point of granting bail. The Court proceeded to enumerate the factors:

9. ... *among other circumstances, the factors [which are] to be borne in mind while considering an application for bail are:*

- (i) *whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;*
- (ii) *nature and gravity of the accusation;*
- (iii) *severity of the punishment in the event of conviction;*
- (iv) *danger of the accused absconding or fleeing, if released on bail;*
- (v) *character, behaviour, means, position and standing of the accused;*
- (vi) *likelihood of the offence being repeated;*
- (vii) *reasonable apprehension of the witnesses being influenced; and*
- (viii) *danger, of course, of justice being thwarted by grant of bail.*

9. Considering the aforesaid facts and circumstances of the present case and the fact that the trial is at the initial stage and though the petitioner has contended some facts, but in the considered opinion of this Court, the same can ultimately be appreciated and adjudged during trial by leading cogent evidence and not at the stage of considering the application for bail. This Court further observes that even as per the petitioner, he was in a live-in relationship with the prosecutrix since 2004 and had continued the same even after having married with some other lady. Therefore, considering the fact that the trial is at an initial stage, the complainant has alleged grievous allegations against the petitioner and for the purpose of recovery of objectionable videos/photographs/laptops from the petitioner, the State has asked for custodial interrogation of the petitioner.

10. Resultantly, in the considered opinion of this Court, the facts emerging from the record culminates into dismissal of the present bail application. Accordingly, the present bail application filed by the petitioner is dismissed.

11. Before parting with the order, this Court would like to place it on record by way of abundant caution that whatever has been stated hereinabove in this order has been so said only for the purpose of disposing of the prayer for bail made by the petitioner. Nothing contained in this order shall be construed as expression of a final opinion on any of the issues of fact or law arising for decision in the

case which shall naturally have to be done by the Trial Court seized of the trial.

12. With aforesaid direction, the present bail application, filed by the petitioner stand disposed of.

P.S.TEJI
(VACATION JUDGE)

JUNE 13, 2016
pkb

