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

+ **BAIL APPLN. 2232/2016**

SUMIT PHOGAT

..... Petitioner

Through: Mr. Viraj Dattar & Mr. Rajeev Sirohi,
Advocates.

versus

STATE

..... Respondent

Through: Mr. Mukesh Kumar, APP along with
W/SI Vinod Kapoor, PS-Vasant
Vihar, for the State.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI

ORDER
20.12.2016

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The petitioner has preferred the present bail application under Section 439 Cr.P.C. to seek regular bail in case FIR No.1038/2014 under Section 376/ 506 IPC registered at PS – Vasant Vihar, South Delhi. The petitioner has been in judicial custody since 16.10.2014 after being arrested on 13.10.2014. The charge-sheet stands filed in the case and the evidence of eleven witnesses, including the prosecutrix has already been recorded.

Mr. Dattar has pointed out that in the first statement given to the Military Police, the prosecutrix had stated that she and the petitioner were in close relationship for about two months and that they used to sleep together

on many nights. She also stated that on 22.05.2014 at 1400 hrs. they had gone to Munirka temple and while waiting for the temple to open, she had herself stated that she would not marry the petitioner accused and thereafter the accused ran away from the spot. She claims to have made the said statement jokingly. The statement dated 24.05.2014 further shows that the petitioner repeatedly called the prosecutrix but it was the prosecutrix, who did not respond. She also stated that she had no complaint against him and that she hoped that the petitioner would not cheat her and marry her because he had promised to do so.

As to whether, or not, the petitioner had made any such promise, and even if such a promise was made, whether he had endeavoured to fulfil the same, or not, are matters of trial. The evidence of material prosecution witnesses, including the prosecutrix stands recorded. The petitioner has been in judicial custody for over two years and there is no justification to continue to keep him in judicial custody any further at this stage. As noticed hereinabove, the establishment of physical relationship between the parties was not a result of exercise of any brutal force by the petitioner.

In these circumstances, the bail application is allowed. The petitioner is directed to be released on bail subject to:

- i) his furnishing personal bond with one surety in the sum of Rs.10,000/- to the satisfaction of the Trial Court;
- ii) he shall provide his mobile phone number to the Trial Court at the time of his release, which shall be kept in working condition at all times. The same shall not be changed without prior intimation to the Trial Court;
- iii) he shall not contact the prosecutrix or any other prosecution witness

in the case, or tamper with the evidence in the case.

Dasti.

DECEMBER 20, 2016

B.S. Rohella

VIPIN SANGHI, J