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

+ **BAIL APPLN. 2274/2016**

JITENDER KUMAR SWARNKAR Petitioner

Through: Counsel (appearance not given)

versus

STATE (GOVT OF NCT OF DELHI) & ANR Respondents

Through: Ms.Kusum Dhalla, APP for State with
Sub Inspector Shri Gopal, Police
Station-Shakarpur

CORAM:

HON'BLE MR. JUSTICE I.S.MEHTA

ORDER

% **08.11.2016**

This is an application under Section 439 Cr.P.C. read with Section 482 Cr.P.C filed on behalf of the petitioner seeking grant of regular bail in case FIR No.0421 dated 29th February, 2016, under Section 376 IPC & Section 3 & 4 of Dowry Prohibition Act, registered at Police Station-Sultanpuri, Delhi.

Counsel for the petitioner has submitted that the petitioner is an innocent person having no nexus with FIR No.0421 dated 29th February, 2016, under Section 376 IPC & Section 3 & 4 of Dowry Prohibition Act, registered at Police Station-Sultanpuri, Delhi. He has submitted that the petitioner and the complainant were in live-in relationship and the petitioner never broke down any promise made on his part. He has further submitted that the marriage between the petitioner and the complainant was fixed on

28th November, 2015 but at the last moment the same was broken down by the complainant taking side of one young boy who happened to be in the same office. He has further submitted that subsequently after breaking down of the marriage between the petitioner and the complainant, FIR No.0421 dated 29th February, 2016, under Section 376 IPC & Section 3 & 4 of Dowry Prohibition Act was registered at Police Station-Sultanpuri, Delhi. He has further submitted that the allegations alleged by the complainant is false and right now the petitioner is in JC since 2nd April, 2016. He has further submitted that if at all there was a physical relationship with the complainant that was with consent. He has further submitted that the complainant is a major who was working in the same office where one another young boy too was working and prays that the petitioner be released on bail.

On the other hand learned APP vehemently opposes the present bail application and submitted that the allegation in the present petition is false and no arrangement for marriage had ever taken place. Learned APP has further submitted that the complainant is a major and is a Chartered Accountant.

From the arguments advance by both the parties before this Court the facts emerging are that the petitioner as well as the compliant are major. The allegation in the FIR is that the petitioner took undue advantage and took her to the house of the petitioner at D-243, second floor, Gali No.2, Laxmi Nagar, Delhi and exploited her physically and sexually between the period 2011-2014 which is reproduced here under:

“That applicant first time met with above named Jitendra Kumar Sawarnkar in year of 2008 when he used to teach in Shri Ram Group of College, Muzaffarnagar. In the year of 2009

applicant came to Laxmi Nagar, Delhi for taking coaching classed for the study of CA and started living in girls PG. Jitendra Kumar Swarnkar was also residing in a tenanted premise at Laxmi Nagar.

2. That above named Jitendra Kumar Swarnkar opened a coaching institute in the name of Immense Education Pvt Ltd at U-182/1, Second Floor , Shakarpur, Delhi – 3. That on 19.03.2011, father of applicant expired then Mr. Jitendra Kumar Swarnkar became a well wisher of applicant and came close to applicant. He used to tell the applicant that her brother and sister are minor and they are not major and they are not capable to take rational decision of life, so he will take care of them. He started taking interest in the business and affairs of family of the applicant and he promised the applicant to marry in near future and on the pretext of marriage he lured the applicant and started taking applicant to his house situated at Laxmi Nagar having address D-243, 2nd Floor, Gali No.10, Laxmi Nagar and physically and sexually exploited the applicant from June, 2011 to January, 2014. Whenever applicant asked him to marry her, he avoided on one pretext or the other. That in the month of November, 2014 applicant and her mother requested the above named person for marriage but he avoided to marry the applicant and finally in the month of January, 2015 he agreed to marry the applicant on the condition that family of applicant shall give Rs.25,00,000/- to him. That applicant and her family gave Rs.24,25,000/- to Jitendra Kumar Swarnkar through cheques and cash details of which are as under: dated bank number/cash amount 31.01.2015 835215 (PNB) 5 lakhs, 20.05.15 054241 (SBP) 2 lakhs, 06.06.2015 054242 (SBP) 2 lakhs, 14.07.15

054244 (SBP) 5 lakhs, 15.07.15 054243 (SBP) 2 lakhs, 17.07.15 054245 (SBP) 25,000/-, 20.06.15 cash 4 lakhs, 02.07.15 cash 4 lakhs. That family of applicant had to pay the above mentioned amount of Rs.24,25,000/- to Mr.Jitendra Kumar Swarnkar because they had no other choice except to fulfil the illegal demand of Sh. Jitendra Kumar Swarnkar. That thereafter the ceremony of engagement the above name person Mr.Jitendra Kumar Swarnkar demanded Rs.10,00,000/- and Verna Car in the month of September, 2015 then applicant and her family members requested him that they are unable to fulfil his demand of Rs.10,00,000/- and Verna Car and tried to make him understand that they had already paid the amount of Rs.24,25,000/- but he openly threatened the applicant and her family member that if you don't fulfil his demanded in that event he threatened that he would defame the applicant and her family in the society and applicant won't be able to show her face in the society. He further threatened the applicant that neither he will marry the applicant nor he will let her marry the applicant to another person. In case if applicant marries with someone else in that event he would kill the applicant and her husband."

It is also emerging the facts of this case that both the petitioner as well as the complainant were in good relation and allegation is not of one day incident but the allegation is from June, 2011 to January, 2014 which indicates that both the parties were having cordial relations and there is an element of consent on the part of the complainant.

It is an admitted case of both the parties that the petitioner right now

is in JC since 2nd April, 2016 therefore no further investigation is required.

Since there is an element of consent on the part of the petitioner and the petitioner is in JC since 2nd April, 2016, consequently, the petitioner is granted bail on his furnishing a bail bond in the sum of Rs.25,000/- with one surety of the like amount to the satisfaction of the concerned Court below with the condition that he should not visit the house of the victim and shall not try to contact the victim or her family members in any manner whatsoever; he shall not tamper the prosecution evidence and he should not leave India without prior permission of the Court below.

The present bail application is disposed of accordingly. However, this order shall not affect the merit of the case.

I.S.MEHTA, J

NOVEMBER 08, 2016/radhika