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

+ **BAIL APPLN. 2280/2016**

RAJU @ RADHEY SHYAM

..... Petitioner

Through: Mr. Puneet Khurana, Advocate.

versus

STATE

..... Respondent

Through: Mr. Rajat Katyal, APP and Ms. Ankita Goyal, Advocate for the State.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

ORDER
08.11.2016

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Crl.M.A. No. 17374/2016

Exemption allowed, subject to all just exceptions.

The application stands disposed of.

BAIL APPLN. 2280/2016

The petitioner has preferred the present bail application to seek anticipatory bail in case FIR No.470/2016 under Section 376/ 328/ 506 IPC registered at PS – K.N. Katju Marg.

The case of the prosecution is that the petitioner accused was known to the mother-in-law of the prosecutrix, who is about 19 years old. The prosecutrix stated that she resided with her husband and parents-in-law. The

petitioner was considered like brother to the mother-in-law of the prosecutrix. As the husband of the prosecutrix had no job, the mother-in-law of the prosecutrix had spoken to the accused for a job for the prosecutrix. The mother-in-law of the prosecutrix had talked to the petitioner on the previous day and the petitioner had asked the prosecutrix to come to A-Block, Near Petrol Pump, Near Sector-16. He also stated that after seeing the prosecutrix, he would find a suitable job for the prosecutrix. Accordingly, the prosecutrix reached at the given address in the evening at about 5/ 6 p.m. The petitioner then took the prosecutrix to a beauty parlour at Peeragarhi for providing her a job. She reached the beauty parlour near Peeragarhi Metro Station with the accused. The prosecutrix was offered water and after drinking the same, she became unconscious. After some time, when she re-gained her senses, she found herself in bed with the petitioner with her clothes removed. She wept and the petitioner asked her not to tell anyone about the incident and threatened to kill her husband. Thereafter the petitioner left the prosecutrix near her home.

The anticipatory bail application of the petitioner was rejected by the learned ASJ on two occasions, i.e. on 21.07.2016 and 15.09.2016. The order dated 21.07.2016 shows that it was argued on behalf of the petitioner before the learned ASJ that the physical relationship between the applicant and the prosecutrix established was consensual.

As to whether, or not, the said relationship was consensual, is a matter of investigation. Looking to the seriousness of the allegations and the stand taken by the accused before the learned ASJ, in my view, the custodial interrogation of the petitioner is necessary in the facts of this case.

Reliance placed by the petitioner on ***Bhadresh Bipinbhai Sheth Vs.***

State of Gujarat & Another, CrI.Appeal Nos.1134-1135/2015 decided by the Supreme Court on 01.09.2015 is not apposite in the facts and circumstances of the case. In the said decision, the Supreme Court has quoted from the Constitution Bench decision in ***Gurbaksh Singh Sibbia & Others Vs. State of Punjab***, (1980) 2 SCC 565. The quotation from ***Gurbaksh Singh Sibbia*** (supra) relied upon by the petitioner from para 31 of the said decision reads as follows:

“31. In regard to anticipatory bail, if the proposed accusation appears to stem not from motives of furthering the ends of justice but from some ulterior motive, the object being to injure and humiliate the applicant by having him arrested, a direction for the release of the applicant on bail in the event of his arrest would generally be made. On the other hand, if it appears likely, considering the antecedents of the applicant, that taking advantage of the order of anticipatory bail he will flee from justice, such an order would not be made. But the converse of these propositions is not necessarily true. That is to say, it cannot be laid down as an inexorable rule that anticipatory bail cannot be granted unless the proposed accusation appears to be actuated by mala fides; and, equally, that anticipatory bail must be granted if there is no fear that the applicant will abscond. There are several other considerations, too numerous to enumerate, the combined effect of which must weigh with the court while granting or rejecting anticipatory bail. The nature and seriousness of the proposed charges, the context of the events likely to lead to the making of the charges, a reasonable possibility of the applicant's presence not being secured at the trial, a reasonable apprehension that witnesses will be tampered with and “the larger interests of the public or the State” are some of the considerations which the court has to keep in mind while deciding an application for anticipatory bail.”

In my view, on a prima facie evaluation of the case at this stage it cannot be said that the allegations made in the FIR against the petitioner

have been made with some ulterior motive with a view to injure and humiliate the petitioner by having him arrested. The Supreme Court has observed that it cannot be laid down as an inexorable rule that anticipatory bail cannot be denied unless the proposed accusation appears to be actuated by mala fides; and, equally, that anticipatory bail must be granted if there is no fear that the applicant will abscond. There are several other considerations, too numerous to enumerate, the combined effect of which must weigh with the Court while granting or rejecting anticipatory bail. These considerations, inter alia, are: (i) the nature and seriousness of the proposed charges; (ii) the context of the events likely to lead to the making of the charges, (iii) a reasonable possibility of the applicant's presence not being secured at the trial, (iv) a reasonable apprehension that witnesses will be tampered with and, (v) the larger interest of the public or the State.

I am conscious of these considerations and it is on application of the said considerations that I am of the view that the petitioner is not entitled to anticipatory bail at this stage, since the offence is still under investigation and the petitioner is evading interrogation in respect of a serious charge. I may also observe that Section 82 Cr.P.C. has been invoked since the petitioner has not joined the investigation.

Dismissed.

VIPIN SANGHI, J

NOVEMBER 08, 2016

B.S. Rohella