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

+ BAIL APPLN. 2379/2016
MOHD.DANISH

..... Petitioner

Through: Mr.S.A.Rajput, Advocate.

versus

THE STATE (NCT OF DELHI) & ANR.

..... Respondents

Through: Mr.Kewal Singh Ahuja, APP for State
with SI Santosh Kumar, P.S. Tilak
Nagar, New Delhi.

CORAM:

HON'BLE MR. JUSTICE I.S.MEHTA

ORDER

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21.11.2016

This is an application under Section 439 Cr.P.C. filed on behalf of the petitioner Mohd. Danish for grant of bail in case FIR No.709/2016, under Sections 323/376/506/34 IPC, registered at Police Station Tilak Nagar, New Delhi.

Learned counsel for the petitioner submitted that the petitioner is an innocent person having no nexus with the allegations made in the FIR No.709/2016 dated 6th October, 2016, under Sections 323/376/506/34 IPC, registered at Police Station Tilak Nagar, New Delhi. Counsel further submits that the petitioner is in J/C since 6th October, 2016. He further submits that there is no allegation of rape on the date of registration of the FIR, i.e. 6th October, 2016 and what is alleged in the FIR is that the petitioner promised to marry the complainant. Learned counsel for the

petitioner further submitted that the petitioner has never made any such promise to the complainant. He further submitted that the victim is a major and the allegation alleged in the FIR is for the purpose of ulterior motive and further submitted that no purpose would be served if he is kept in J/C for further period. And prays that the petitioner may be released on bail.

Notice. Learned APP for the State accepts notice and opposes the grant of bail to the petitioner and submitted that the allegations are regarding physical relations with the complainant and there is a statement made by the victim/prosecutrix under Section 164 Cr.P.C. wherein it is reiterated by the victim that the contents of the FIR are correct.

Heard learned counsel for the parties and perused the record.

It is an admitted fact that the victim is a major. What is emerging on the record is that on the date of the registration of the FIR, there is no allegation of rape on the person of the complainant. The allegation of rape is prior to 6th October, 2016. The allegation made by the victim on 6th October, 2016 is just about a quarrel taken place at her house. The relevant contents of the FIR are reproduced hereunder:

“..... He kept the proposal of marriage to her and stated that he will be pronounced the talaq to his wife and after that in April 2016 Danish had made the physical relation found me alone in my home without my consent. When I objected on this then he assured to marry me and thereafter he made the physical relations occasional on different places. After some time when I talked about the marriage then he threatened to kill me and his wife Sumayla Ansari @ Janu also threatened not to talk with him. On dated 6/10/16, I present in my home with my mother and my brother Shabbir Ahmed then Danish with his wife and two other girls came in my house and beaten me and threatened that since today I don't talk with Danish nor having any relation with him. Danish also threatened me that if I told the said incident to anyone

then he shall be killed me and my family. I told about all the incident in front of Doctor. Danish has made the physical relation without my consent and raped by threatening and beating me. His wife and others with their inclusion came at my house and beaten. The strict action taken against them.....”

Considering the facts and circumstances and the fact that the petitioner is in J/C since 6th October, 2016 and even if at all there is any allegation of rape in the past it cannot be denied that the same was with the consent of the victim and no purpose would be served if the petitioner is kept in J/C for further period. Consequently, I admit the petitioner on bail, on his furnishing bail bond in the sum of Rs.20,000/- with one surety of the like amount to the satisfaction of the concerned MM with the condition that:-

- (i) the petitioner shall not leave the country without prior permission of the Court concerned;
- (ii) he shall not contact with the victim/complainant in any manner till the disposal of the case;
- (iii) he shall also not tamper with the prosecution evidence.

The bail application is disposed of in the above terms. However, this order shall not affect the merit of the case.

Copy of this order be given *dasti*, as prayed.

I.S.MEHTA, J

NOVEMBER 21, 2016

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