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

DECIDED ON : 27th APRIL, 2016

+ **CRL.M.C. 3834/2015**

SONALI KHATNANI Petitioner
Through : Mr.Aman Usman, Advocate.

VERSUS

STATE & ANR. Respondents
Through : Mr.Raghuvinder Varma, APP for
State with SI Darpan Singh,
P.S. New Friends Colony
Mr.Haneef Mohammad, Advocate for
Respondent No. 2.

**CORAM:
HON'BLE MR. JUSTICE S.P.GARG**

S.P.GARG, J. (Oral)

1. Present petition has been preferred by the complainant/prosecutrix to challenge the legality and correctness of an order dated 08.07.2015 of learned Additional Sessions Judge by which anticipatory bail was granted to respondent No.2 in case FIR No.287/2015 under Section 376 IPC registered at Police Station New Friends Colony. Status report is on record. The petition is contested by respondent No.2

2. I have heard the learned counsel for the parties and have examined the record. I have also examined the judgments *Neeru Yadav vs.State of UP* in Crl.A.No.2587/2014 decided by the Apex Court on

05.12.2014; *Ram Govind Upadhyay vs. Sudarshan Singh & Ors* in CrI.A.No.381-82/2002 decided by Supreme Court on 18.03.2002; *State of Orissa vs. Jagannath Patel and Anr.* 1992 CriLJ 1818; *State vs. Nitin Shah* 1994 CriLJ 2262; *Nikhil Parasar vs. The State of NCT of Delhi* in Bail Appl.No.1745/2009 decided by this Court on 01.02.2010 and *State of U.P. vs. Naushad* in CrI.A.No.1949/2013 decided on 19.11.2013 by Hon'ble Supreme Court.

3. Petitioner's counsel urged that the impugned order granting anticipatory bail to respondent No.2 in a heinous offence cannot be sustained being without application of judicial mind. There were specific allegations of commission of rape and unnatural offences against respondent No.2. The petitioner was not granted any reasonable opportunity of being heard and the Trial Court did not wait for her counsel. The Investigating Agency did not incorporate Section 377 in the FIR. The relevant materials on record were not taken into consideration while granting anticipatory bail.

4. Learned counsel for respondent No.2 urged that the impugned order was passed in the presence of proxy counsel after hearing arguments at length. The liberty granted to the respondent was never misused by him.

5. At the outset, it may be mentioned that the impugned order has not been challenged by the State. The complainant was present in person along with her proxy counsel Mr. Gajender Bisht. After hearing them and on consideration of the materials available on record, the anticipatory bail was granted to the respondent No.2 on 08.07.2015. The impugned order does not reflect if any request for pass-over was made. Only flaw in the impugned order is that it did not record detailed reasons for granting anticipatory bail to respondent No.2.

6. There are no allegations if the liberty granted to respondent No.2 was misused or he did not join the investigation. Upon completion of investigation, a charge-sheet has already been filed in the court. The respondent No.2 is a doctor by profession. He has also been implicated in case FIR No.89/15 under Sections 380/454 IPC and was granted anticipatory bail vide order dated 9.4.2015 by the said learned Additional Sessions Judge.

7. On merits, I find that there were sufficient and valid reasons to grant anticipatory bail to respondent No.2. It has come on record that both the prosecutrix and respondent No.2 were acquainted with each other since long being school friends at Gorakhpur. The petitioner herself has disclosed that both of them had met in 2008 in Delhi. She had accepted the proposal of the respondent No.2 with initial reluctance. In May 2013, due to certain differences, the said relationship came to an end and the respondent No.2 shifted to Lucknow for MDS study. It is relevant to note that in July-August 2012, the petitioner met one Anshuman Atroley. Physical relations took place between the two on 19.07.2013 on the alleged promise to marry. The petitioner lodged FIR No.374/14 under Section 376 IPC at Police Station NFC on 27.08.2014 against him. Subsequently, the matter was settled and petition for quashing of the FIR was filed. This request was declined by this Court. It is alleged that after October, 2013, the respondent No.2 visited her on various dates from January 2014 to July, 2014 and stayed with her for couple of days. He forced her to perform oral sex during these visits. Respondent No.2 promised to marry and established physical relations with her. When he subsequently declined to marry, she lodged a complaint before NCW in December, 2014. It is further stated that respondent No.2 had given in writing to marry the petitioner.

8. It has come on record that the matter was investigated by NCW and no action was recommended. The petitioner was a mature lady, aged about 28 years. After coming to know about registration of FIR under Section 376 IPC against Anshuman Atroley, it is highly unbelievable that promise to marry will be made by respondent No.2. The petitioner's conduct to get the previous FIR quashed under Section 376 IPC lodged against Anshuman Atroley on the basis of settlement is unacceptable. The story presented by the petitioner Sonali Khatnani seems improbable. It is to be ascertained during investigation as to under what circumstances, the respondent No.2 agreed to perform marriage in 'writing'. The said document does not bear any date. Respondent No.2 has denied the execution of the said document.

9. In view of above facts and circumstances, apparently it was a fit case for grant of anticipatory bail. The Trial Court should have recorded reasons for grant of anticipatory bail. The said omission has led to the filing of the present petition.

10. In the light of the above discussion, I find no merit in the petition and it is dismissed.

11. Observations in the order shall have no impact on the merits of the case.

(S.P.GARG)
JUDGE

APRIL 27, 2016/sa