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

DECIDED ON : 24th JANUARY, 2017

+ **CRL.M.C. 305/2017**

SWATI AGGARWAL Petitioner

Through : Mr.Gautam Das, Advocate.

versus

THE STATE & ORS. Respondents

Through : Mr.Amit Gupta, APP.

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J. (Oral)

CRL.M.A.No.1368/2017 (Exemption)

Exemption allowed subject to all just exceptions.

The application stands disposed of.

CRL.M.C. 305/2017

1. Present petition has been preferred by the petitioner under Section 439(2) Cr.P.C. read with Section 482 Cr.P.C. for cancellation of bail granted to respondent No.3 (in short 'Respondent') by an order dated 16.12.2016 of learned Additional Sessions Judge in case FIR No.371/2016 registered under Section 376 IPC at PS Sector-23, Dwarka.

2. I have heard the learned counsel for the petitioner and have examined the file. Learned counsel for the petitioner urged that the Trial Court did not consider the gravity of the offence and granted anticipatory bail to the petitioner despite specific allegations of commission of rape on the false promise to marry. The petitioner was exploited and sexually

abused on various occasions on the pretext to perform marriage. The petitioner had conversation with the respondent's mother who had also agreed to perform their marriage. Subsequently, the respondent changed his mind and started avoiding her. He even criminally intimidated and abused her.

3. Admitted position is that the prosecutrix and the respondent were acquainted with each other since October, 2013. The petitioner is aged about 26 years and the age of the respondent is around 33 years. Both were gainfully employed and worked in different offices. Admitted position is that they remained in contact with each other through SMSs and whats-app messages for long. In her comprehensive complaint lodged on 04.12.2016, the prosecutrix gave graphic account as to how and under what circumstances physical relations took place between the two on the promise to marry.

4. On perusal of the contents of the FIR it reveals that physical relations took place between the prosecutrix and the respondent on various occasions at various places albeit on the alleged promise to marry. The prosecutrix had visited respondent residence at Noida on several occasions. She had even gone to his place of work at Chennai and had contacted his office colleagues. When the marriage between the two did not happen, the prosecutrix opted to lodge the instant FIR. Apparently, physical relationship with the respondent was consensual. Nothing has emerged on record to show if any time the petitioner took into confidence her family members in an attempt to solemnize her marriage with the respondent though they were familiar with each other since October, 2013. Despite getting inkling about respondent's intention not to perform marriage, the petitioner continued to

have physical relations with him thereafter too. She was aware of the consequence of her physical intimacy with the respondent.

5. Impugned order records that it is not the case from the very inception the respondent had not intended to marry the prosecutrix. The marriage between the parties could not happen due to other reasons i.e. difference in castes and prosecutrix' behaviour by sending abusive e-mails etc. Order further records that the respondent had expressed willingness to marry with the prosecutrix.

6. Order further reveals that custodial interrogation of the respondent is not required as nothing is to be recovered at his instance. The Trial Court has noted various judgments to support grant of anticipatory bail.

7. I find no illegality or material irregularity in the impugned order where anticipatory bail was granted to the respondent with the direction to join the investigation as and when required. The respondent was further directed not to contact the prosecutrix in any manner i.e. through whats-app & e-mails, etc. Merely because, the marriage between the prosecutrix and the respondent could not happen due to certain reasons which are to be ascertained during trial, the respondent cannot be denied anticipatory bail.

8. I find no merit in the present petition and it is dismissed.

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

(S.P.GARG)
JUDGE

JANUARY 24, 2017 / tr