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

+ BAIL APPLN. 155/2017

MOHD.OLIAR

..... Petitioner

Through Mr.Vinay Jaidka and Mr.Manesh
Kumar, Advs.

versus

STATE

..... Respondent

Through Mr.Panna Lal Sharma, APP with
W/SI Shanti, PS Jamia Nagar.

CORAM:

HON'BLE MR. JUSTICE P.S.TEJI

ORDER

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27.01.2017

Arguments heard.

The present application has been filed under Section 438 Cr.P.C. for the grant of anticipatory bail in FIR No.1337/2016, under Section 376 IPC, Police Station Jamia Nagar.

As per FIR, the allegations levelled against the petitioner/accused are that the prosecutrix was living with her husband at Jamia Nagar. Before her marriage, she was having friendship with the accused/petitioner since college days. Accused asked the prosecutrix that he used to like her and also proposed to marry her but the accused was already married and was having a child. The fact regarding marriage of the accused came to the knowledge of the prosecutrix later on. The accused made relations with the prosecutrix under inducement and forced her to indulge in illicit relation. Accused

threatened the prosecutrix that he would show their pictures and upload them on the internet. The accused forcibly took the prosecutrix to a room and raped her. Accused also videographed the said incident. When prosecutrix became pregnant, she asked the accused to marry her but he managed to get the child aborted. On taking the help of video of rape, the accused kept on raping the prosecutrix time and again. On 20.11.2016, the marriage of prosecutrix was solemnized with Usman Tyagi. Even after marriage, the accused had been pressurizing the prosecutrix to get physical with him. When she refused, the accused threatened the prosecutrix that he would throw acid on her, kill her husband and her family members.

Argument advanced by the counsel for the petitioner is that the petitioner and prosecutrix are well known to each other and the relationship between them was consensual. The allegations of commission of rape are false. Both of them have visited several places together of which photographs have been annexed along with the bail application. It is further submitted that both of them were in constant touch with each other. In support of this, the exchange of messages has been placed on record. It is further submitted that the accused has joined the investigation on issuance of notice by the Investigating Officer. Counsel for the petitioner further argued that the petitioner is a married man having a child and is a public servant. He has relied upon judgments in the case of ***Vishal Grover v. State 2017 (1) JCC 19, Jagdish Nautiyal v. State II (2013) DLT (Crl.) 219, Vikas Rana v. State 2015 (DLT SOFT) 806, Arif Iqbal v. State 164 (2009) DLT 157, Akshay Manoj Jaisinghani v. The State of***

Maharashtra, Monika Singh v. State II (2012) DLT (Crl.) 460, Dilawar Singh v. State of Delhi VII (2007) SLT 787 and State of Punjab v. Ranjinder Singh (Crl.A No.1608/2007 decided by Hon'ble Apex Court on 19.11.2007) to press the contention that it is the responsibility of both man and woman to restrain themselves and not indulge in intimate activities prior to the marriage and that promise to marry may or may not culminate into marriage.

On the other hand, learned APP for the State has vehemently opposed the bail application on the ground that there are serious allegations against the petitioner that he raped the prosecutrix after making a promise of marriage and then made videography of the said incident. The said videography was used by the accused time and again in committing rape upon the prosecutrix. It has been submitted that the instrument with which the videography was done including the video clips, are yet to be recovered from the accused and therefore, his custodial interrogation is required.

Undisputedly, as per the allegations levelled in the instant case, the petitioner/accused was already married and was having a child. Despite a married man, he kept on roaming with the prosecutrix and as per her statement, she was raped by the accused on the false promise of marrying her. The material placed on record shows that the accused had been roaming with the prosecutrix and kept her photographs with him which have been placed on record. It is also apparent from the record that the accused kept the recording of the conversation which had taken place between him and the prosecutrix and the same have also been annexed with the bail application. It is

specifically alleged against the accused that he prepared videography of the alleged rape of the prosecutrix by him and commission of subsequent rapes with the threat to make the said videography public. It is also apparent from the record that the accused is a public servant. It has also come during the course of arguments that the instrument with which the videography of the alleged rape was recorded and the video clips are yet to be recovered by the prosecution.

The conduct of the petitioner/accused shows that despite being married earlier and having a child, he maintained relations with the prosecutrix. The photographs placed on record show that he had been roaming various places with the prosecutrix. The messages placed on record by the accused further show that he kept on recording the conversation which had taken place between him and the prosecutrix. It is specifically alleged against him that he kept on raping the prosecutrix after making videograph of the rape committed by him upon the prosecutrix. It is also not in dispute that the accused is a public servant.

In view of the above mentioned facts and circumstances, seriousness of allegations, material available on record, conduct of the petitioner/accused and the non-recovery of instrument and video clips, this Court is not inclined to grant the concession of anticipatory bail to the petitioner/accused.

Before parting with the order, this court would like to place it on record by way of abundant caution that whatever has been stated hereinabove in this order has been so said only for the purpose of disposing of the prayer for bail made by the petitioner. Nothing

contained in this order shall be construed as expression of a final opinion on any of the issues of fact or law arising for decision in the case which shall naturally have to be done by the Trial Court seized of the trial.

Bail application is accordingly dismissed.

P.S.TEJI, J

JANUARY 27, 2017
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