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

+ BAIL APPLN. 243/2017

BITTO

..... Petitioner

Through Mr.Sanjay Rathi, Adv.

versus

STATE (GOVT OF NCT OF DELHI)

..... Respondent

Through Mr.Akshai Malik, APP with ACP
Saurabh Chandra, Insp.R.S. Meena
(SHO) and W/SI Neeraj, PS
Begumpur.

CORAM:

HON'BLE MR. JUSTICE P.S.TEJI

ORDER

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15.03.2017

The present application has been filed under Section 439 Cr.P.C. for the grant of regular bail in FIR No.315/2016, under Sections 376/312/323 IPC, Police Station Begumpur.

As per FIR, the prosecutrix levelled the allegations against the accused that she knew him since the last one year. The accused had been raping the prosecutrix on the false pretext of marrying her. The accused claimed himself to be a bachelor and had been promising the prosecutrix with marriage. About 2 months ago she became pregnant due to the commission of rape by the accused. The prosecutrix informed the accused of her pregnancy on which he assured the prosecutrix that he would marry her. Accused brought the pills to terminate the pregnancy and under pressure she consumed the same

due to which miscarriage took place. Later on, prosecutrix came to know that the accused was already married with a son. When prosecutrix asked the accused to marry her, he started making excuses. She further alleged that on 22.04.2016 the accused committed a wrong act with her on the false pretext in Japanese Park. On 28.04.2016, when the prosecutrix went to the house of accused and ask for marriage, the accused, his wife and other family members gave beatings to her.

The prosecutrix was medically examined and thereafter on the basis of statement of the prosecutrix, FIR of the present case was registered. During the course of investigation, statement of the prosecutrix under Section 164 Cr.P.C. was recorded in which she reiterated the allegations made while making complaint to the police.

During the course of arguments, the sole argument advanced by the counsel for the petitioner is that the prosecutrix had given the consent and by the virtue of the said consent, the accused cannot be said to have committed the offence of rape. The arguments were heard in detail and during the course of arguments, the admitted position is that the accused happened to be a married person whereas the prosecutrix is unmarried. As per the statement made to the police and under Section 164 Cr.P.C. also, case of the prosecution is that the prosecutrix was kept in dark and in a deceitful manner was made to pursue sexual relation with the accused.

I have heard the counsel for the petitioner in detail. This is not the sole case. There are number of other similar cases also. These type of matters are coming to the Court on a daily basis and generally

the plea is taken by the accused persons that the sexual relations were maintained with the consent of the prosecutrix, though it may be on the pretext of marriage. The question for consideration before this Court is, whether a man knowingly that he is married and not legally entitled to a second marriage as barred under the law, could be permitted for such type of enjoyment by spoiling the lives of unmarried girls. This Court is of the considered opinion that once an unmarried girl is subject to such promises and ill-treated, particularly when she levels allegations which are the subject matter of legal proceedings, virtually stigmatic to the prosecutrix where the plea generally taken by the accused is that it was with the consent of the prosecutrix though he had a married wife at his residence and not entitled for second marriage barred by law is not entitled for any concession on this pretext.

Apparently, the fact involved in the present case does not merely constitute a legal offence but is also an immoral offence, on the ground that he is acting in a deceitful manner as he has a legal wife at home while also indulging in play with an unmarried girl outside his house which ultimately could ruin her life. It is often seen that sometimes the girl wrongfully believes to be the lawful wife of the man to whom she believes or treats as her husband, while the husband is well aware and knows that he cannot be the husband of such a lady. Such an act cannot be condoned as the same is not permissible lawfully, socially, morally and legally. This Court is of the considered opinion that Courts need not appreciate such types of acts on behalf of the persons and show any leniency to give licence to

such persons to commit such acts in the society. The Court is not to encourage such types of acts of such persons and must ensure the curbing of the same.

At this stage, counsel for the petitioner does not want to press the present bail application.

Consequently, on the request of the counsel for the petitioner, the present bail application is dismissed as withdrawn.

P.S.TEJI, J

MARCH 15, 2017
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