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IN THE HIGH COURT OF DELHI AT NEW DELHI

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BAIL APPLN. 667/2017

Order reserved on : 1st September, 2017

Order pronounced on : 24th October, 2017

HAMEEDULLAH MOHD AKBAR

.....Petitioner

Through: Mr. K. K. Manan, Senior Advocate with
Mr. Ankush Narang, Mr. Jain Sharma,
Mr. Manveen Dhanjal and Ms. Shivani
Kant, Advocates.

Versus

STATE (NCT OF DELHI)

.....Respondent

Through: Mr. Mukesh Kumar APP for the State,
Inspector Kusum Dangi with SI Karan
Singh, Crime Branch.
Mr. Manoj Taneja, advocate for the
complainant

CORAM:

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

1. By way of the present petition, filed under Section 439 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.P.C.'), the petitioner seeks **grant of regular bail** in FIR No.14/2017 under Sections 385/387/419/420/506/467/468/471/506/376/ & 120B of the Indian Penal Code, 1860 (hereinafter referred to as 'IPC') and Section 14 of the Foreigners Act, 1946 and Sections 66D/66E of the Information Technology Act, 2000, registered at P.S. Crime Branch, Delhi. The petitioner is stated to be in judicial custody since 03.02.2017. Status report is on record.

2. The case of the prosecution is that on 02.02.2017, the complainant, a 39 year old woman, US citizen had approached the Crime Branch with complaint of cheating, sexual assault and extortion committed against her in India by the petitioner. In 2016 she joined the social platform Facebook and came in contact with one MK Faheem/ petitioner who lured her and persuaded her for physical meetings. Initially the complainant and the petitioner were casual friends but their friendship got intense as time passed and they decided to meet for the first time on 19.11.2016 in Leela Hotel, Gurgaon. They again met on 21.11.2016 in J.W Mariot Hotel, Aerocity, Delhi. The petitioner further won confidence of the complainant in the name of marriage assurances and became physically intimated with her. In the guise of love and affection, petitioner also managed to cheat the complainant of 86,000 USD on various false pretexts. The petitioner had got the cheated amount transferred to Afghanistan through western union money transfer and further received this amount in India through alternate ways. The petitioner also threatened her to upload the indecent photographs and videos on the internet that he clicked of her. On these facts the FIR No.14/2017 got registered against the petitioner and investigation was taken up.
3. Mr. K.K Manan, learned Senior Counsel for the petitioner contended that the complainant is a well educated 39 years old woman and is capable of making her own decisions; that the petitioner never withheld his identity and the complainant always knew that the petitioner was from Afghanistan; that the complainant had infact sent the money through Western Union to

her relatives in Afghanistan and not to the petitioner; that the petitioner has never received a single penny in his own account; that whatever relationship ever existed in between the parties was always consensual and the question of promise to marry never arose; that significantly the complainant stated that the petitioner was involved in some Interpol case and was a scammer but she thereafter again gave money; that all the rooms in the hotels where both the parties stayed were booked in the name of the complainant; that there is no iota of evidence to show that the petitioner had forged the voter id card or the adoption deed; that no case under Section 420 IPC is made out against the petitioner as there is no dishonest inducement to the complainant to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security; that the petitioner did not extort any money from the complainant inasmuch as she herself willingly and voluntarily kept giving money to the petitioner; that Smt. Ansari Begum has never denied that the petitioner was adopted by her and the same is not denied by her own son Ghulam Rasool; that moreover the adoption deed was never prepared by the petitioner or used and thus there is no question of forgery being committed by him; that the entire case of the complainant is concocted and false and no offence is made out against the petitioner; that the petitioner is a father of two children and his wife is pregnant and if the present bail is not granted to the petitioner it would adversely affect his family and his career.

4. Per contra Mr. Mukesh Kumar APP for the State assisted by Mr. Manoj Taneja, learned counsel for the complainant, strongly opposed the bail application of the petitioner and submitted that the bail application is not required to be granted in favour of the petitioner considering the seriousness of the offence, in which he has been involved; that after proper interrogation, identification and after due satisfaction the petitioner was arrested on 03.02.2017; that in the disclosure statement of the petitioner it is admitted that he contacted the complainant through facebook and how he proceeded thereafter and entered into physical relationship with the complainant on the promise of marriage; that the disclosure statement also indicate that the appellant took huge amount of money in US dollars on various dates; that from the very inception the petitioner introduced himself as Fahim and not Hameedullah and thus the petitioner had the requisite mens rea and thereafter extended the false promises of marriage, entered into physical relationship and then drained out the money from her; that the allegation of overnight stay in different hotels is corroborated by the room bookings which were registered in the name of complainant but all the payments were made by the petitioner by using his credit card; that the adoption deed in which the petitioner is stated to have been adopted by Smt. Ansari Begum was totally false and forged by the petitioner in order to manage his illegal stay in India; that there is extortion in the present case in as much as the petitioner threatened the complainant to give money to him or else he would have uploaded nude pictures of her.

5. I have heard the learned counsel for the parties and perused the material available on record.
6. Perusal of the record shows that the allegations made by the complainant are serious and grave in nature. Investigations revealed that as per the exchange of emails and email ID created, the petitioner had impersonated and talked with the complainant as “Faheem Mohd Zai”. The petitioner being an Afghan national by impersonating himself gained confidence of the complainant on the promise of marriage and entered into a physical relationship with her. All the payments of the room bookings in various hotels were made by the petitioner by using his credit cards. Two mobile phones recovered from the possession of the petitioner had indecent photographs of the complainant and also of other girls.
7. The total amount deceptively taken or collected by the petitioner from the complainant by way of various transfers is calculated to be \$ 90,168 (approximately Sixty Lakh in Indian Rupees). The amount was taken at the behest of the petitioner through his known people by impersonation and by means of devices such as emails/computer resources by adopting fraudulent means from the complainant.
8. The office of FRRO reported that the petitioner had arrived in India on 03.07.2013 on a medical visa which expired on 31.12.2013 and he has been overstaying from 01.01.2014. He has not sought any extension of his visa. The petitioner claims to be adopted by one Smt. Ansari Begum for managing his illegal stay in India, however the same is denied by this lady. Thus, the adoption deed dated

13.01.2016 alleged to have been recovered from the house of the petitioner is under challenge.

9. The Additional Session Judge, while dismissing the bail application of the petitioner, vide order dated 30.03.2017 observed that *"The document i.e. the adoption deed relied by the counsel for accused during arguments that he is adopted child does not favour the accused. Firstly, prima facie, it is a forged document and secondly Muslim Law does not recognize adoption of a major male or by a person who is already having children."*
10. In ***Central Bureau of Investigation v. V. Vijay Sai Reddy*** reported in ***AIR 2013 SC 2216*** the Supreme Court observed as under:-

"While granting bail, the court has to keep in mind the nature of accusation, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the Accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public/State and other similar considerations. It has also to be kept in mind that for the purpose of granting bail, the legislature has used the words reasonable grounds for believing instead of the evidence which means the court dealing with the grant of bail can only satisfy itself as to whether there is a genuine case against the Accused and that the prosecution will be able to produce prima facie evidence in support of the charge. It is not expected, at this stage, to have the evidence establishing the guilt of the Accused beyond reasonable doubt."

11. In view of the above observation and submissions made by the parties and from documentary evidence produced on record, *prima*

facie it appears that present petitioner has been actively involved in the commission of the alleged offences and there is a genuine reason to say that if the present petitioner is released on bail, then he will tamper with the evidence or even abscond.

12. Keeping in view the principles laid down by the Apex Court and after careful scrutiny of the facts and circumstances of the present case, the contents of the FIR in question and other material placed on record and in view of the serious allegations against the petitioner and other factors including severity of the punishment prescribed in law, I find no sufficient ground to grant bail to the petitioner. Therefore, the present application filed by the petitioner is dismissed.
13. Before parting with this order, this Court would like to place it on record by way of abundant caution that whatever has been stated in this order has been 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 arising for decision in the case which shall naturally have to be done by the Trial court.
14. Accordingly, the present petition is dismissed.

SANGITA DHINGRA SEHGAL, J.

OCTOBER 24 , 2017

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