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

+ BAIL APPLN. 827/2017

DEVENDER TYAGI

.....Petitioner

Through: Mr. Sandeep S. Tiwari, Advocates.

versus

STATE NCT OF DELHI

....Respondent

Through: Mr. Herein Sharma, APP for the State  
with W/SI Priyanka, P.S. Mukherjee  
Nagar.

**CORAM:**

**HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL**

**ORDER**

**08.11.2017**

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1. By way of the present petition filed under Section 438 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.P.C.'), the petitioner seeks **grant of anticipatory bail** in FIR No. 439/2017 under Sections 376 of the Indian Penal Code, 1860 (hereinafter referred to as 'IPC') registered at Police Station, Mukherjee Nagar, New Delhi.
2. Brief facts necessary for the disposal of the present petition are that, a complaint was filed on 18.04.2016, wherein the complainant stated that in 2015 she met one Devender Kumar Tyagi/petitioner, who is a Government Officer working with MSME and residing in the same locality as that of the complainant; that when the complainant sought

assistance for her son from the petitioner, he advised her to set up a factory of solar panels in partnership with him; that on his advise the complainant invested money in setting up a factory for her son and the petitioner helped her in procuring the necessary materials; that the complainant alone spent more than Rs.5,00,000/- in setting up the Solar Panel Company as the petitioner assured her that he would pay his part by the end of the year; that gradually after sometime the petitioner stopped visiting the place of work and started avoiding the complainant's calls; that on 04.04.2016, the complainant visited the petitioner's office in Karnal to seek a way out of the work of Solar Panels which she had started on his advice as the same was not running good; that on 18.04.2016 the petitioner visited the complainant's house to discuss the work related issues but soon after he forced her to indulge in physical relations against her will; that after the petitioner left the complainant's house at 5 p.m., she reported the matter to the police.

3. Mr. Sandeep S. Tiwari, learned Counsel for the petitioner contended that the petitioner has been falsely implicated in the present case and is having apprehension of his arrest; that the petitioner is having family relations with the complainant as both reside in the same locality; that the petitioner is a government servant having no means to start partnership business of solar panel and has merely assisted and guided the complainant's son on her request; that the present complaint has been lodged by the complainant to recover business

losses; that the petitioner has joined investigation as and when directed by the Trial Court; that the petitioner is ready to abide by all terms and conditions as this Court deem appropriate and is also ready to furnish bail bond to the satisfaction of this Court; that hence in the aforesaid circumstances, anticipatory bail be granted to the petitioner.

4. Per contra, Mr. Herein Sharma, learned APP for the State opposed the bail application of the petitioner and submitted that there are specific allegations of sexual assault on the person of prosecutrix against the petitioner; that the anticipatory bail application of the petitioner has been dismissed on two occasions i.e. 03.04.2017 and 07.04.2017 by the Trial Court; that the petitioner is also likely to tamper with the evidence collected during investigation and therefore anticipatory bail, as prayed for, be denied.
5. I have heard the arguments advanced by learned counsel for the parties and perused the material available on record.
7. Upon careful scrutiny of the case, this Court observes that the complainant has taken a consistent stand in her statements recorded under Section 161 and 164 Cr.P.C., whereby she has made specific allegations of sexual assault against the present-petitioner that are grave and serious in nature. Hence, the statement of the prosecutrix cannot be brushed aside.
8. Perusal of the record reveals that despite specific directions of the Additional Sessions Judge, the petitioner has joined investigation only twice on 07.12.2017 and 09.02.2017 and thereafter remained

absconding. Moreover, it is also on record that pursuant to registration of the present FIR, the petitioner has been threatening the complainant to withdraw her complaint.

9. Regard may be had to the parameters for grant/refusal anticipatory bail as laid down by the Apex Court in a line of authorities. In ***Bhardesh Bipinbhai Sheth vs. State of Gujarat and ors.*** reported in ***AIR 2015 SC 3090*** Apex Court reiterated the following principles:

*“(a) the nature and gravity of the accusation and the exact role of the accused must be properly apprehended before arrest is made;*

*(b) The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a court in respect of any cognizable offence;*

*(c) The possibility of the applicant to flee from justice;*

*(d) The possibility of the accused's likelihood to repeat similar or other offences;*

*(e) Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her; (f) Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people;*

*(g) The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role of the accused in the case. The cases in which the accused is implicated with the help of Sections 34 and 149 of the Penal Code, 1860 the court should consider with even greater care and caution, because over implication in the cases is a matter of common knowledge and concern;*

*(h) While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors, namely, no prejudice should be caused to free, fair and full*

*investigation, and there should be prevention of harassment, humiliation and unjustified detention of the accused;*

*(i) The Court should consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;*

*(j) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.”*

10. Keeping in view the well established principles of law, the facts and circumstances of the present case, the nature and gravity of the alleged offence; and also considering that the investigation is at a preliminary stage, this Court is not inclined to grant anticipatory bail to the petitioner in this case. Hence the petition stands dismissed.
11. Before parting with the above order, it is made clear that nothing observed herein shall have any bearing upon the merits of the case during trial.

**SANGITA DHINGRA SEHGAL. J**

**NOVEMBER 08, 2017**