

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of hearing and order: May 30th 2017

+ BAIL APPLN. 994/2017
GOVIND RAJ

..... Petitioner

Through: Mr. Niraj Chaudhary, Mr. A.S.
Sharma, Advocates

versus

THE STATE

..... Respondent

Through: Mr. Kewal Singh Ahuja, Additional
Public Prosecutor for the State with
W/Inspector Vipesh, Police Station
Vijay Vihar, Delhi

CORAM:
HON'BLE MR. JUSTICE P.S.TEJI
ORDER

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P.S. TEJI, J. (ORAL)

1. By this application filed under Section 438 of Cr. P.C., the petitioner seeks anticipatory bail in FIR No. 467/2017 under Section 376/506 of Indian Penal Code, registered at Police Station Vijay Vihar, Delhi.

2. The case in hand was registered on the complaint of prosecutrix being an employee in a private firm. She had stated in her complaint that she felt love towards the petitioner who made false promise of marriage and also gave her un-hygienic meals for treating her according to his wishes. She also stated that the petitioner had been

black mailing her on the pretext of her photos. According to her, the petitioner refused 7-8 times after making promise of marriage. Petitioner's family members and his sister in law also misbehaved with her. It is also alleged that the petitioner threatened her with spoiling her life in case she married another person or he would shoot the other person. It is also alleged that the petitioner on the pretext of false promise of marriage, took her to a room near New Delhi Railway Station and made illicit relations with her for two years.

3. Learned counsel for the petitioner has contended that the prosecutrix is aged about 23 years and is known to the petitioner since the last about five years and both of them had been visiting with each other including the family residence of both the parties. It is further contended that the petitioner is ready and willing to marry the prosecutrix and so far as the allegation regarding harassment of the prosecutrix is concerned, it is contended that the petitioner never caused any sort of harassment. It is further contended that the petitioner had first moved his anticipatory bail application and interim bail was granted by learned Special Judge (CBI-II), District North-West, Rohini Courts, Delhi till 02.05.2017 but the same has now been rejected by the learned Additional Sessions Judge – 03, North West Rohini Delhi vide order dated 02.05.2017. It is further contended that the prosecutrix had voluntarily made friendly relations with the petitioner and she was in a 'live-in relationship' with the petitioner for about five years and was involved with him physically, emotionally and mentally and the petitioner had promised her with marriage as

soon as possible and the prosecutrix also requested the petitioner to visit Vaishno Devi Mandir in June 2016 alongwith her family members and the petitioner also visited there with her family members. It is further stated that the petitioner had been cooperating with the investigation and attending the proceedings before the investigating officer concerned and also handed over one mobile phone and pen drive containing the photographs of the prosecutrix and the petitioner and never avoided joining the investigation and he is still ready and willing to join the investigation as and when required. Apart from the above, it is urged that there is no incriminating evidence against the petitioner showing the involvement of the petitioner in the present case and the petitioner never administered any sort of obnoxious substance to the prosecutrix with motive to make physical relations with the prosecutrix. In support of his contentions, learned counsel for the petitioner has relied on the decision of this court in *Rohit Chauhan vs. State NCT of Delhi*, 2013 (2) CC Cases (HC) 311. Therefore, it is urged that the petitioner be granted concession of pre-arrest bail in the present case.

4. Learned Additional Public Prosecutor for the State filed the status report and vehemently opposed the aforesaid contentions of the petitioner. It is contended on behalf of the State that the prosecutrix has specifically stated in her complaint that the petitioner had taken obscene photographs of her and she still doubts that the petitioner may threaten and pressurize her with the same. For the purpose of recovering the other photographs of the prosecutrix the custodial

interrogation is required. On this pretext, it is prayed that the bail application of the petitioner be rejected.

5. I have heard the submissions made on behalf of both the sides and also gone through the contents of the petition and the record of this case.

6. In the first place, it is necessary to observe that in the present proceedings, this Court is not concerned about the feasibility of the allegations of the offence punishable under Section 376 Indian Penal Code or merit thereof but on the grant of anticipatory bail to the petitioner. In the considered opinion of this Court, at this stage, it cannot be said as to whether there was any physical relationship between the petitioner and the complainant and, if so, whether it was consensual. The fact remains that there are specific allegations of rape against the petitioner. It would ultimately be for the trial court to arrive at the findings as to whether such an allegation stands proved or not, on the basis of evidence that would be produced by the prosecution in support of its case. With these preliminary remarks, I advert to the core issue, namely, whether in the circumstances of this case, petitioner is entitled to anticipatory bail or not.

7. For granting anticipatory bail to the person against whom the allegations of rape have been levelled, the factors that need to be taken into consideration, are; (a) the nature and gravity of the accusation and the exact role of the accused; (b) The possibility of the applicant to flee from justice; (c) The possibility of the accused's to repeat the same or similar such offences; (d) Impact of grant of anticipatory

bail especially in such cases that affect a very large number of people; (e) 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; (f) The Court should consider reasonable apprehension of tampering of the evidence or apprehension of threat to the complainant and unless there are peculiar and special facts and circumstances in a given case, the Court would not be justified in extending the benefit of anticipatory bail to such a person.

8. This court also observed the record of the case, which shows that the petitioner has himself annexed the photographs of the prosecutrix with him, which itself strengthen the apprehension of the prosecutrix that the petitioner must have more photographs apart from the photos already in the pen drive and mobile phones, which have been handed over by the petitioner to the investigating officer of this case.

9. In view of the aforesaid settled principles and considering the facts and circumstances of the present case and the fact that the investigation is at a preliminary stage; and while perusing the allegations levelled against the petitioner, and considering the gravity of offence and the nature, this Court is not inclined to grant anticipatory bail to the petitioner in this case.

10. Resultantly, in the considered opinion of this Court, the facts

emerging from the record culminates into dismissal of the present bail application. Accordingly, the present bail application filed by the petitioner is dismissed.

11. 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 anticipatory 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.

12. With aforesaid direction, the present bail application, filed by the petitioner stands disposed of

MAY 30, 2017
pkb

P.S.TEJI, J