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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of hearing and order: May 30th 2017

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**BAIL APPLN. 995/2017
HIMANSHU SURI**

..... Petitioner

Through: Mr. Amit A. Rai, Mr. Rahmat Bansal,
Advocates

versus

STATE (NCT OF DELHI)

..... Respondent

Through: Mr. Panna Lal Sharma, Additional
Public Prosecutor for the State with
PSI Jitender Police Station Model
Town, Delhi.
Mr. Varun Dhingra, Advocate for
Complainant

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

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P.S. TEJI, J. (ORAL)

1) By this present application filed under Section 438 of Cr. P.C., the petitioner seeks anticipatory bail in FIR No. 0536/2016 under Section 498-A/406/34 of Indian Penal Code registered at Police Station Model Town, Delhi.

2) The present FIR has been registered at the instance of the complainant, who has stated before the police that after marrying with

Shri Himashu Suri, her husband (petitioner herein) started beating her and making allegations on her character. After two days of her marriage her jewellery articles were taken away by her in-laws and they used to make dowry demands. She had specifically stated that on 29th December 2015, her husband asked her to bring Rs.5 lakhs from her parents as he wanted to expand his business. When she denied asking for money from her parents, her husband beat her up, upon which she sought help from the neighbours. She called her parents who were also beaten up by her husband and father-in-law. She further stated in her complaint that on 30.12.2015 she went to Vijay Nagar Police Station for filing a complaint against her in-laws but they refused to take the complaint, and Ghaziabad Women Cell had also not taken any action against her in-laws. After entering into a settlement with her husband she started living with her husband but after 2-3 days, on instance of her sister-in-law her husband abused her and gave beatings to her at the time of marriage of her sister-in-law. When she asked for handing her jewellery, her husband locked her in a room. She was also thrown out from her matrimonial home and her clothes, stridhan, jewellery items, dowry articles, and documents in respect of her identity were not given to her.

3) Learned counsel for the petitioner contended that after marriage with the complainant on 29.01.2015, the petitioner started living separately from his wife from 29.04.2015. It is further stated that FIR in this case was registered on 29.09.2016 and prior to that the petitioner had been appearing before the CAW Cell at every stage as

and when he was asked to appear before CAW Cell. Even the articles of the complainant as recorded in the seizure memo have been returned. Petitioner has already joined the investigation on 13.02.2017, 08.03.2017, 03.04.2017 and is cooperating with the investigation and there is no need for custodial interrogation of the petitioner, yet the petitioner has been served with a police notice on 03.04.2017 to appear before the police at the Model Town Police Station for arrest. Thereafter the petitioner approached the learned Additional Sessions Judge, North Rohini Courts, Delhi, by way of bail application seeking anticipatory bail, and the same by order dated 19.05.2017 was rejected by the Trial Court. Accordingly, the petitioner has approached this court for anticipatory bail.

4) Learned counsel for the petitioner further contended that since the petitioner has been cooperating with the investigation and has not tampered with any evidence, and is still ready to join the investigation as and when so directed by the investigating officer, there is no apprehension of the petitioner fleeing from justice or tampering with the evidence. Apart from this, the co-accused of the case have already been granted pre-arrest bail and they have also been cooperating with the criminal investigation, therefore, the petitioner ought to be granted bail in the present case.

5) Learned Additional Public Prosecutor for the State, on instructions from the investigating officer, has stated that since the recovery of the jewellery articles and documents of the complainant have to be effected from the petitioner, therefore his arrest is sought.

On receipt of notice for arrest, the petitioner had filed a bail application in the Rohini Court on 06.04.2017 in which both the parties have stated before the court that the matter is pending before the mediation cell, therefore the arrest of the petitioner was stayed till 25.04.2017 and thereafter till 19.05.2017. However, on 19.05.2017, the bail application filed by the petitioner was dismissed and the petitioner is evading his arrest. Therefore, his application may be rejected.

6) I have heard the submissions of learned counsel appearing on behalf of the petitioner as well as the submissions of learned Additional Public Prosecutor for the State and also gone through the material placed on record.

7) So far as the contents, grounds, circumstances, explanations and reasoning given by the petitioner in the present petition are concerned, this Court observes that all the above issues shall be tried by the concerned Court and be decided based on leading cogent evidence. For the purpose of deciding the bail application, this Court need not go into the merits of the case, but only consider whether the petitioner has been able to make out any prima facie case for grant of bail or not.

8) This Court observes that the learned Additional Sessions Judge has declined the bail application of the present petitioner on the ground that the allegations against the petitioner are serious in nature, mediation has already failed and the investigation is still going on.

9) This court while dealing with the procedure and right of the

accused with respect to bail in the cases under Section 498-A this Court in the matter of ***Udit Raj Poonia*** vs. ***State (Govt Of Nct Of Delhi)***, decided on 16.02.2017, has observed the following guidelines:

**Provision of Section 41 Cr.P.C. and the guidelines issued vide Standing Order Nos.330/2008 and 444/2016 are mandatory in nature and must be complied with.*

**The DCP/ACP shall ensure that the alleged articles are in existence and the recovery/seizure could take place without the arrest. In other words, that arrest is the only mode in the facts and circumstances to effect the recovery before granting the sanction to arrest.*

**Similarly, the Courts while considering the bail under Section 437, 438, 439 Cr.P.C. shall refuse the bail in exceptional circumstances.*

**The exceptional circumstances may be assessed by the Court concerned and the bail application must be decided expeditiously.*

**In matrimonial cases bail is a rule and refusal is an exception.*

10. In the considered opinion of this Court, before granting or refusing bail, the court must satisfy itself after considering the material placed on record and further developments in the investigations or otherwise and other peculiar circumstances of each case, whether there

are sufficient grounds for releasing the applicant on bail or not. This Court is also of the opinion that in criminal jurisprudence, every case stands on a different footing and no straightjacket formula can be adopted.

11. In the facts of the present case, this Court observes that the petitioner has already joined the investigation and has not tampered with any evidence of the case. Therefore, in the facts and circumstances of the case, this Court is inclined to grant anticipatory bail to the petitioner – Himanshu Suri. Accordingly, petitioner is directed to join the investigation as and when called by the investigating officer by notice in writing and to cooperate with the investigation of the case and in the event of arrest, the petitioner shall be released on furnishing bail bond to the sum of Rs.15,000/- with one surety in the like amount to the satisfaction of the arresting officer.

12. With aforesaid directions, the petition filed the petitioner is allowed and the petitioner is directed to join the investigation as and when required, he shall not tamper with the evidence and influence the prosecution witnesses. He is further directed not to leave the country without prior permission of the court concerned.

13. 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 present petition. 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.

14. Bail application is disposed of accordingly.

P.S.TEJI, J

MAY 30, 2017

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