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IN THE HIGH COURT OF DELHI AT NEW DELHI

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BAIL APPLN. 1549/2017

Order reserved on: 05th December, 2017

Order pronounced on: 7th December, 2017

SHUBHAM CHAWLA

....Petitioner

Through: Mr. Sanjay Suri, Mr. Rishabh Relan,
Mr. Siddharth Kaushik, Advocates with
parents of the petitioner.
versus

THE STATE

.....Respondent

Through: Mr. Mukesh Kumar, APP for State with
SI Ashok, P.S- Amar Colony.
Mr. Hardev Chadha, Advocate with
complainant and her parents in person.

CORAM:

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

1. By way of the present petition filed under Section 438 of the Criminal Procedure Code, 1973 (hereinafter referred as '**Cr.P.C.**') the petitioner seeks **grant of anticipatory bail** in respect of FIR No. 264/2017, under Section 354/323/341/506/427 of the Indian Penal Code, 1860 (hereinafter referred as '**IPC**'), registered by P.S. Amar Colony, New-Delhi.
2. Briefly stated the facts of the case are that the complaint was lodged by Ketika/complainant alleging that on 07.07.2017 at around 09.30 am, when she was leaving for her coaching centre in an auto rickshaw, the petitioner came near the auto rickshaw, stopped her vehicle, pulled her out and asked her to come along with him. On her refusal to do so, the petitioner threatened her and

even snatched her phone. Thereby the complaint was lodged by the complainant under Section 354/323/341/506/427 of IPC. Hence, the present petition.

3. The learned counsel for the petitioner contended that the present FIR filed against the petitioner is false and fabricated; that the petitioner and the complainant were in relationship with each other since two and a half years, which was not accepted by her parents and therefore, implicated him in a false case; that the petitioner was acting under the influence of her parents and is in constant touch with the petitioner even after the lodging of the FIR; that no ingredients of Section 354 is fulfilled so as to implicate the petitioner under the said section; that no custodial interrogation is required. Hence, under the said circumstances, the present petition should be allowed.
4. Per contra, the learned APP for the State contends that benefit of anticipatory bail should not be accorded to the petitioner as the offence is of serious nature and stated that the petitioner has not even joined the investigation.
5. I have heard the learned counsel for the parties and perused the material available on record.
6. After giving careful consideration to the entire facts and circumstances of the present case, it is observed that as per FIR, the petitioner herein is charged for the offences under Section 354/323/341/506/427 of IPC. The complainant during lodging of her FIR has specifically stated that on 07.07.2017, the petitioner stopped her auto rickshaw and pulled her out of it. She further

alleged that on her refusal to go along with her, he hit her and thereafter threatened her that he would kill her or kidnap her or get her attacked with acid. Further, while recording of her statement under Section 164 Cr.P.C, she stated on similar lines by accusing him of severe offences and further stated that he threatened her that he would get her abducted if she refuses to stay with her and would also misuse her photographs.

7. Perusal of the record shows that he has been accused by the complainant of the offences under Section 354/323/341/506/427 of IPC. The contention of the counsel for the parties that no ingredients of Section 354 is fulfilled so as to implicate the petitioner under the said section is not accepted as per the allegations made by the complainant in her FIR as well as her subsequent statement made by her during recording of statement under Section 164 Cr.P.C. Section 354 IPC, makes penal the assault or use of criminal force to a woman to outrage her modesty. The essential ingredients of offence under Section 354 IPC are: (a) That the assault must be on a woman (b) That the accused must have used criminal force on her (c) That the criminal force must have been used on the woman intending thereby to outrage her modesty. He is charged with other serious offences of penal consequences.
8. On perusal of the statements made by her against the petitioner, it is observed that the allegations against the petitioner are grave and serious. Also, in Status Report, it has been stated that the investigation is still in process and the petitioner herein is evading

arrest by not joining the investigation. Thus, the chance of the petitioner escaping the procedure of law, tampering with the evidence or threatening the complainant exists. In my view, since the case is at the threshold and the investigations are underway, it will be practically scuttling the investigation in case the anticipatory bail is granted to the petitioner which will create hurdles in arriving at the truth.

9. Determining the parameters in granting anticipatory bail in cases of serious offences. The Supreme Court in ***Bhadresh Bipinbhai Sheth vs State Of Gujarat & Anr.*** reported in (2016) 1 SCC 152 after analyzing the entire law has observed as under:-

“(a) The nature and gravity of the accusation and the exact role of the accused must be properly comprehended 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. In view of the aforesaid settled principles, the facts and circumstances of the present case and perusing the allegations leveled against the petitioner, and considering the gravity of offence, this court is not inclined to grant anticipatory bail to the petitioner. Accordingly, the petition stand dismissed along with the pending application, if any.
11. Observations made in the order shall have no impact on the merits of the case.

SANGITA DHINGRA SEHGAL, J
DECEMBER 07 , 2017 gr//