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

+ **BAIL APPLN. 1571/2017**

MOHIT YADAV

..... Petitioner

Through : Mr.Shivcharan Garg, Mr.Saurabh
Kumar and Mr.Imran Khan,
Advocates.

versus

STATE

..... Respondent

Through : Ms.Kusum Dhalla, APP for the State
with SI Geeta Rani, PS Kotwali.
Mr.Kushbir Singh and Ms.Shaiza,
Advocate for the complainant with
complainant in person.

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

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11.08.2017

Crl.M.A.No.12988/2017

1. Exemption allowed subject to all just exceptions.
2. Application is disposed of.

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1. The petitioner has filed this bail application for seeking anticipatory bail in FIR No. 159/2017 u/s 376(E)/365/342/384/34 IPC, registered at P.S. Kotwali.

2. Status report has been filed.

3. Learned counsel for the petitioner Sh. Shivcharan Garg has drawn the

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attention of this Court to the handwritten report dated 20th March 2017 recorded vide DD No. 72-B at P.S. Chandni Chowk (Annexure-C) wherein she has not levelled any allegation of rape against the petitioner. While referring to the contents of FIR (Annexure-A), it has been submitted that she stated about the rape being committed by the petitioner and she being confined in a hotel by him.

4. Learned counsel for the petitioner has also drawn the attention of this Court to the conversation between the petitioner and the complainant wherein she is insisting the petitioner to meet her.

5. Mr. Shivcharan Garg, learned counsel for the petitioner has submitted that the relationship between the parties was consensual hence cannot be termed as rape. The petitioner has not violated any terms and conditions of the bail granted to him earlier in case FIR No. 631/2015 u/s 328/376/506 IPC registered at P.S. Vikas Puri.

6. The petitioner was already on bail in case FIR No. 631/2015. In this FIR No. 159/2017 the complainant has levelled very serious allegations against the petitioner that she was blackmailed by him and was called on the pretext of returning her objectionable photographs. However, he has snatched money from her and also committed rape on her and even the photographs were not returned to her.

7. The prayer of the petitioner for release on anticipatory bail has been opposed by the State, *inter alia*, on the ground that as per the terms and conditions of the bail order releasing him on bail in FIR No. 631/2015 he was directed not to contact the prosecutrix. Despite that he had been in contact with the prosecutrix. It has also been submitted by learned APP for State that his custodial interrogation is required in this case.

8. The power exercisable under Section 438 of The Code of Criminal Procedure is somewhat extraordinary in character and it is only in exceptional cases where it appears that the person may be falsely implicated or where there are reasonable grounds for holding that a person accused of an offence is not likely to otherwise misuse his liberty then power is to be exercised under Section 438. (*Rel. Adri Dharan Das vs. State of West Bengal* (2005) 4 SCC 303)
9. In the instant case, despite there being an FIR already registered against the petitioner in which he was enlarged on bail subject to the condition not to contact the prosecutrix, the record annexed with the bail application shows that he was in constant touch with her.
10. In the given circumstances, the plea of consent in physical relationship with the complainant cannot be a ground to grant anticipatory bail to the petitioner.
11. The application is dismissed.

PRATIBHA RANI, J.

AUGUST 11, 2017
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