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

+ **BAIL APPLN. 1757/2017**

SUNIL PAL

....Petitioner

Through: Mr. Gaurav Goswami and Mr.
Ashish Upadhayay, Advocates.

versus

STATE

.....Respondent

Through: Mr. Amit Ahlawat, APP for
State with SI Singita from
Police Station- Nand Nagri.
Mr.Shakir Hussain, Advocate
for Complainant.

CORAM:

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

ORDER
25.09.2017

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1. By way of the present petition filed under Section 438 of the Code of Criminal Procedure, 1973 (herein referred as Cr. P.C.), the petitioner seeks **anticipatory bail** in FIR No. 690/2017 under Sections 376/354C/354 of Indian Penal Code, 1860 and Sections 67/67A the Information Technology Act, 2000, registered at Police Station Nand Nagri, Delhi.
2. Brief facts of the case are that on 30.05.2016 a complaint was lodged wherein the complainant stated that the petitioner, who is known to the complainant from last 5 years, indulged in physical relation with her on the false promise of marriage. Complainant further stated that she was unaware of the fact that

the petitioner was married and had two children. The complainant alleged that the petitioner had started to blackmail her on the pretext of her obscene photos taken by him and threatened her that he would upload those photos on social media and send it to the complainant's friends and family.

3. Learned counsel for the petitioner has contended that the complainant is a mature girl and well aware of her acts; that the complainant had freely, voluntarily and consciously consented to her relationship with the petitioner and her consent was not in consequence of any misconception or concealment of any fact; that the fact of petitioner's marriage was well within the knowledge of the complainant as there are photos, on record, of complainant with the petitioner and his children; that the complainant and her brother had falsely implicated the petitioner in a rape case as it was all a part of the conspiracy between the two which can be proved from the whatsapp chat between the complainant's brother and the petitioner.
4. Mr. Amit Ahlawat, learned APP for the State vehemently opposed the anticipatory bail application of the petitioner and submitted that the complainant has specifically stated in her complaint that the petitioner had taken obscene photographs of her and the same has been used by the petitioner and his wife to threaten her; that NBW has already been issued against the petitioner by the Metropolitan Magistrate, KKD Courts, Delhi; that rape being such a grave offence, punishable with rigorous imprisonment of either description for a term not less than 7

years, but which may extend to imprisonment for life, the bail application of the petitioner be dismissed.

5. I have heard the learned counsel for the parties and perused the material available on record.
6. 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.”

7. Keeping in view the well established principles of law, the facts and circumstances of the present case, the fact that NBW has already been issued against the petitioner and that the investigation is at a preliminary stage; and also considering the nature and gravity of the alleged offence, this Court is not inclined to grant the anticipatory bail to the petitioner in this case. Hence the petition stands dismissed.
8. 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.
9. Accordingly the petition is disposed of.

SANGITA DHINGRA SEHGAL, J.

September 25, 2017/gr