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

+ **BAIL APPLN. 2209/2017 & CRL.M.B.1933/2017**

GOPAL KRISHAN

..... Petitioner

Through: Mr.Prashant Mehndiratta, Advocate

versus

STATE (NCT OF DELHI)

..... Respondent

Through: Mr.Kewal Singh Ahuja, APP for the
State with W/SI Reema, PS Janakpuri

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

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08.12.2017

1. This application has been filed by the petitioner under Section 438 Cr.P.C., praying for anticipatory bail in case FIR No.281/2017, under Sections 376/506 IPC, PS Janakpuri wherein non-bailable warrant has been issued against the petitioner for his non-appearance on 14th October, 2017.
2. The application of the petitioner seeking anticipatory bail has also been dismissed by the Court of Sessions.
3. Learned APP for the State submits that the petitioner has joined investigation and charge-sheet has been filed in this case without arrest.
4. While granting protection to the petitioner vide order dated 7th November, 2017, following order was passed:

'BAIL APPLN. 2209/2017 & CRL.M.B.1933/2017

1. By way of these applications, the petitioner is praying for grant of anticipatory bail/interim anticipatory bail in case FIR No.281/2017, under Sections 376/506 IPC, PS Janakpuri.

2. *Status report has been filed. Copy of the statement of the complainant recorded under Section 164 Cr.P.C. has also been placed on record.*

3. *The complainant has made statement under Section 164 Cr.P.C. twice. She has also given an affidavit to the Investigating Officer and mentioned that she was being treated by the petitioner as sister and there was salary dispute. She has also stated in her statement under Section 164 Cr.P.C., recorded second time, that no such incident, as mentioned by her, had taken place and that she wanted to go to her native place and was not in a fit state of mind when she got the FIR registered and that she wanted to withdraw her case.*

4. *In the above facts, petitioner is directed to join investigation as and when required by the IO/SHO concerned.*

5. *List on 8th December, 2017. Till then, no coercive steps shall be taken against the petitioner.'*

5. Learned counsel for the petitioner has placed on record copy of the order sheets before the learned MM-05 (South West) to show that despite the charge-sheet being filed without arrest, learned MM has not passed any bail order mainly on the ground that the offence under Section 376/506 IPC is triable by the Court of Sessions. The proceedings dated 22nd September, 2017 before the learned MM reveal that cognizance of offence was taken on that date and the accused was ordered to be summoned on 3rd October, 2017. On 3rd October, 2017 the matter was adjourned to 14th October, 2017. On 14th October, 2017 exemption application was filed before the learned MM which was rejected and non-bailable warrants were ordered to be issued against the petitioner. The prayer of the petitioner for cancellation of non-bailable warrants was not acceded to. The accused filed Bail Appln. No.4957/2017. Though initially the petitioner got the relief to the extent

that execution of the non-bailable warrant was stayed on 16th October, 2017, but ultimately the bail application was dismissed for the reason that the third anticipatory bail application is not maintainable.

6. It is a case where the charge-sheet has been filed without arrest. In the circumstances the prayer of the petitioner for bail ought to have been considered by the learned Metropolitan Magistrate. The application for anticipatory bail does not lie for the reason that after filing of the charge-sheet without arrest, the petitioner did not have any apprehension of being arrested by the investigating officer.

7. Taking into consideration that the petitioner is not required for custodial interrogation, that charge-sheet has been filed without arrest and in her subsequent statement under Section 164 Cr.P.C., the complainant has specifically stated that no such incident had taken place with her and she wanted to withdraw her complaint, the petitioner is directed to be released on bail on his furnishing a personal bond in the sum of ₹50,000/- with one surety of the like amount, subject to the satisfaction of concerned Trial Court/Link Court.

8. Bail application stands disposed of.

Order *dasti*.

PRATIBHA RANI, J.

DECEMBER 08, 2017

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