

\$~16

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

+ **BAIL APPLN. 2312/2017**

RAHUL CHOUDHARY Petitioner

Through: Mr.S.K.Garg Narwana, Sr.Advocate
with Mr.Surender Deshwal, Mr.Sahil
A.Garg Narwana & Mr.Siddharth
Joon, Advocates

versus

STATE OF NCT Respondent

Through: Ms.Rajni Gupta, APP for the State
with W/SI Vinod Kapoor PS Vasant
Vihar

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

% **14.11.2017**

CRL.M.A.18615/2017

1. Exemption allowed, subject to all exceptions.
2. The application is disposed of.

BAIL APPLN.2312/2017

1. By way of this application filed under Section 438 Cr.P.C. the petitioner is seeking anticipatory bail in case FIR No.404/2017, under Section 376 IPC, registered at PS Vasant Vihar.
2. Notice. Learned APP as above accepts notice on behalf of the State and files the status report.
3. Learned counsel for the petitioner has referred to the transcript of conversation between petitioner and the prosecutrix and submitted that it was a case of consensual relationship. The petitioner was below 21 years of age at the time of having relations with the prosecutrix and it was not a case of obtaining her consent on promise to marry her.

4. Learned counsel for the petitioner has relied upon decision of this Court dated 21st July, 2017 in CrI.L.P.137/2017 titled Geeta Sharma vs. State of NCT of Delhi submitting that this FIR has been lodged as the petitioner, under the pressure of his family, was going to get married to some other girl and this Court in CrI.L.P.137/2017 titled Geeta Sharma vs. State of NCT of Delhi has observed as under:

“This Court had observed on number of occasions that the number of cases where both persons, out of their own will and choice, develop consensual physical relationship, when the relationship breaks due to some reason, the women use the law as a weapon for vengeance and personal vendetta. They tend to convert such consensual acts as an incident of rape may be out of anger and frustration thereby defeating the very purpose of the provision. This requires a clear demarcation between the rape and consensual sex especially in the case where complaint is that consent was given on promise to marry.”

5. Learned counsel for the appellant has also relied upon decision of Delhi High Court dated 27th January, 2011 in CrI.A.248/2010 titled Sujit Ranjan vs. State and decision of the Hon'ble Supreme Court dated 20th May, 2013 in CrI.A.No.2322 /2010 titled Deepak Gulati vs. State of Haryana.

6. The petitioner in this case is seeking anticipatory bail admitting the physical relation with the complainant. The submission made before the learned Trial Court while seeking anticipatory bail have been noted by the learned Trial Court as under:

“It is contended by Ld.counsel for the accused that according to the Whatsapp chats on record, this was a paid relation and against the physical relations made, the accused was paying to the prosecutrix and there was no promise of the marriage. It is further contended that the relations between the accused and the prosecutrix were made by both of them at their own free will, though, no false promise of marriage was made by the accused.”

7. Reliance placed by learned counsel for the petitioner decision of this Court in *Geeta Sharma's* case (supra) is of no assistance to the petitioner as the observation made in *Geeta Sharma's* case (supra) was at the stage of considering the criminal leave petition filed by the complainant after the respondent No.2/accused was acquitted by the learned Trial Court on the testimony of the complainant as witness.

8. Learned counsel for the petitioner also cannot seek any assistance by placing reliance upon decision of Delhi High Court dated 27th January, 2011 in CrI.A.248/2010 titled *Sujit Ranjan vs. State* and decision of the Hon'ble Supreme Court dated 20th May, 2013 in CrI.A.No.2322 /2010 titled *Deepak Gulati vs. State of Haryana*, which are orders in appeal and not at the stage of anticipatory bail.

9. 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).

10. I do not find it to be a fit case to release the petitioner on anticipatory bail.

11. The bail application is dismissed.

PRATIBHA RANI, J.

NOVEMBER 14, 2017

'hkaur'