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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **BAIL APPLN. 196/2018**

VIKAS & ANR

..... Petitioners

Through: Mr.Ramesh Gupta, Sr. Advocate with
Mr.Bharat Sharma, Advocate

versus

STATE (GOVT OF NCT OF DELHI)

..... Respondent

Through: Mr. Ashish Dutta, APP for State with
W/SI Bhahmo Devi, PS South
Campus

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER

% **24.01.2018**

CrI.M.A. No. 1469/2018 (Exemption)

This is an application filed on behalf of the petitioner for exemption from filing certified copies of the annexures.

Exemption allowed, subject to just exceptions.

Bail Appln. No. 196/2018

Arguments addressed on behalf of either side.

Vide the present petition, the petitioners seek grant of anticipatory bail submitting *inter alia* to the effect that the allegations levelled against the petitioner are wholly false and fabricated inasmuch as the complainant had even got married to the petitioner No.1 on 29.9.2017 in the presence of her family members, i.e., her parents and grand parents and that in the FIR No. 205/2017, registered at PS South Campus qua the incident of the date

17.10.2017 she has also stated categorically to the effect that she wanted to live with her spouse and that further allegations that have been made in the FIR bearing No.199/2017 registered on 27.10.2017, of the alleged rape committed by the petitioner No.1 even prior to the date of the marriage, i.e., 29.9.2017 and even after the marriage by the petitioner No.2 pursuant to the complicity of the petitioner No.1 her spouse also with another co-accused are wholly false and fabricated.

Inter alia, reliance is also placed on behalf of the petitioners on the observations in order dated 23.12.2017 of the learned Additional Sessions Judge-01, Patiala House Courts, New Delhi, wherein it has been observed to the effect that documents had been filed and both sides were vindictively contesting each other and that, both parties had documents in their favour and against the other, before that the documents had to stand to the test of evidence and that the investigation was at its nascent stage and custodial interrogation was required from all the accused persons.

On behalf of the State, reliance is placed on the submissions that have been made in the FIR No. 199/2017, Police Station South Campus and statement under Section 164 Cr.P.C. of the prosecutrix submitting to the effect that there are grave allegations levelled against the petitioners in relation to the rape committed on the prosecutrix and the manner and mode in which the marriage of the prosecutrix was conducted with the petitioner No.1. On behalf of the State, has also been put forth a copy of the MLC of the prosecutrix in relation to her medical examination conducted on 17.10.2017 to indicate that grievous injuries had been sustained by the prosecutrix

on her right hand and the prosecutrix had sustained a fracture of right Ulna.

On behalf of the petitioners, reliance has *inter alia* been placed on the verdict of the Supreme Court in ***Ramesh Singh @ Photti v. State of A.P.***; 2005(2) ACR 1193 (SC) to submit that the statement under Section 164 Cr.P.C. of the prosecutrix has to be read with caution and that it cannot be relied upon.

As regards the reliance that has been placed on behalf of the petitioner on the verdict of the Apex Court in ***Ramesh Singh @ Photti*** (Supra) relied upon, it is essential to observe that the facts thereof are not in *pari materia* with the facts of the instant case especially as the observations and ratio in the said verdict relate to the aspect of evidence of witnesses to be considered in the event of statements of such witnesses having been recorded under Section 164 Cr.P.C. and it has been laid down that the testimonies of such witnesses whose statements have also been recorded under Section 164 Cr.P.C, 1973 though they are to be considered with caution, nevertheless can be acted upon if circumstances on the record do lend support to the truthfulness of such witnesses. Thus it is apparent that it has not been laid down by the said verdict of the Apex Court that statements under Section 164 Cr.P.C. are not to be looked into or cannot be relied upon or cannot be considered truthful.

Without any observations on the merits or demerits of the evidence that may be led or the adjudication that would be made or even the aspect of veracity or otherwise of the statement under Section 164 Cr.P.C. of the prosecutrix, on a perusal of the averments

made in the FIR in question, taking into account the factum further that the averments made in the FIR in question and the statement of the prosecutrix under Section 164 Cr.P.C. are to the effect that the petitioner No.1 had been allegedly raping the prosecutrix repeatedly much prior to the stated marriage on 19.9.2017 and there being alleged complicity of the petitioner No.1 with other co-accused whereby he also allegedly got her repeatedly raped and caused grievous injuries to the prosecutrix, there is no ground whatsoever for grant of anticipatory bail.

The application is declined.

ANU MALHOTRA, J

JANUARY 24, 2018/sv