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

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+ BAIL APPLN. 1193/2018 & CRL.M.A. 9906/2018

Reserved for order : 31st May, 2018

Date of Decision: 1st June, 2018

DEEPAK

..... Petitioner

Through Mr. Jaideep Malik, Mr. Ravi
Soni, Advs.

Versus

THE STATE (NCT OF DELHI)

..... Respondent

Through Ms. Richa Kapoor, Additional
Standing Counsel for NCT of
Delhi.
Mr. Ashish Dutta, APP for
State.

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER (ORAL)

1. The applicant Deepak seeks the grant of anticipatory bail under Section 438 of the Code of Criminal Procedure, 1973 qua FIR No. 141/2018, registered at PS Model Town, under Section 376 read with Section 313 of the Indian Penal Code, 1860 and Section 3 of the Dowry Prohibition Act, 1961 submitting *inter alia* to the effect that he has been falsely implicated in the instant case and that the petitioner and the complainant had a long standing relationship which commenced from friendship to talking and chatting on the phone and then grew into a position to marry and thereafter the complainant of and on started asking money from the petitioner and the petitioner

always paid the same through PayTM to her. It has been submitted through the application that both the petitioner and the complainant tried to convince their parents for the marriage but during the process the petitioner learnt of the complainant's illicit relations with others and also that she had relations with political persons and was an alcoholic. The petitioner has further submitted that on learning of the same when the petitioner asked the same to the complainant, the complainant cut her veins and threatened the petitioner that she would implicate him in a false rape case and demanded a large sum of money from the petitioner whereafter the petitioner stopped talking to the complainant.

2. The petitioner has submitted that on 22.03.2018, a complaint was filed by the complainant at PS Model Town and that when the police called him for investigation, the petitioner reached there and showed the evidences of the illicit relations of the complainant and then the complainant in a very shrewd manner in order to escape from legal consequences of making false complaints and false allegations against the petitioner withdrew the complaint on the pretext of the compromise and stated that she would sit and resolve the dispute and apologized to the petitioner and thus the petitioner did not show the photographs to the police at that time and the complaint was withdrawn. The petitioner has further submitted that he had not established any physical relationship with the complainant and rather it was the complainant who always insisted upon the petitioner for physical relationship which he always refused ethically and morally and that he had never established any physical relationship with the

complainant on making any false promise of marriage. He has further submitted that the averments in the FIR itself indicate that the allegations of physical relationship against him showed consensual sex and that there is a distinction between rape and consensual sex as laid down in each of these cases where anticipatory bail has been granted, which are as under : -

“Deepak Gulati Vs. State of Haryana (2013) 7 SCC 671, Rohit Chauhan Vs. State NCT of Delhi 2013 SCC online Delhi 2016, Akshay Manoj Jaishingani Vs. State of Maharashtra Anticipatory Bail Application No. 2221/2016 Bombay High Court dated 09.01.2017, X Vs. State & Y, 2014 SCC online Mad 224 and Shivashankar @ Shiva Vs. State of Karnataka & Anr. Criminal Appeal No. 504/2018”

3. The petitioner has further submitted that the complainant has nowhere alleged that the petitioner had established forcible physical relationship with her. It has also been submitted by the petitioner that he is willing to join the investigation as and when required.

4. On behalf of the State, the learned Additional Standing Counsel for the State, has vehemently opposed the prayer submitting to the effect that apart from the applicant having raped the prosecutrix, he had also made her undergo an abortion by giving her some medicine without her knowledge and had also made a false promise of marriage since 2013 onwards till 22.03.2018 and that she even lived in the hostel of the petitioner at Hapur in February, 2018 and that she had kept insisting upon the petitioner for marrying her in as much as the petitioner had proposed to her on 25.11.2015 and assured her that he

would marry her and had then indulged into physical relations after their relationship having commenced in 2013 since 25.11.2015 always, they had been together.

5. It has further been averred in the FIR that on 22.03.2018, the petitioner declined to marry her and assaulted her as a consequence of which she lodged a complaint Koshambi and PS Model Town and a settlement was arrived at PS Model Town but the petitioner categorically declined to marry her. The complainant alleged that the petitioner had raped her and had physical relations with her for a period of four years on the promise of marriage, which he had now declined to enter into.

6. It was submitted on behalf of the State that on 21.01.2018, the petitioner had given a medicine and an injection to the complainant and after that she became unconscious and was found got admitted in LNJP hospital vide MLC No. 11155501492/18 dated 21.01.2018. She further stated that the petitioner after that had demanded a sum of Rs.2 crores as dowry demand for marriage. It has further been stated through the status report submitted by the State dated 28.05.2018 submitted by the State that during the course of the investigation in the statement under Section 164 of the Criminal Procedure Code, 1973 dated 26.04.2018, the prosecutrix had detailed all the incidents. The petitioner was also found to be absconding and it has been submitted that the provisions of Section 328 of the Indian Penal Code, 1860 were added as the petitioner had given a heavy dose of anti depressant pills to the complainant / prosecutrix and Section 67 of the Information Technology Act, 2000 was added as the petitioner had circulated the

objectionable photographs of the prosecutrix and had also downloaded the photographs from the social networking sites and that the allegations against the petitioner are serious in nature and his custodial interrogation is required and that the mobile phone of the petitioner with CD has been seized through seizure memo and deposited in malkhana. **Section 67 of The Information Technology Act, 2000** provides as under : -

“67 Punishment for publishing or transmitting obscene material in electronic form. –“Whoever publishes or transmits or causes to be published or transmitted in the electronic form, any material which is lascivious or appeals to the prurient interest or if its effect is such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it, shall be punished on first conviction with imprisonment of either description for a term which may extend to three years and with fine which may extend to five lakh rupees and in the event of second or subsequent conviction with imprisonment of either description for a term which may extend to five years and also with fine which may extend to ten lakh rupees.”

7. Reference may also be made to **Section 68 of The Information Technology Act, 2000**, which provides as under : -

“68 Power of Controller to give directions. -

(1) The Controller may, by order, direct a Certifying Authority or any employee of such Authority to take such measures or cease carrying on such activities as specified in the order if those are necessary to ensure

compliance with the provisions of this Act, rules or any regulations made thereunder.

(2) Any person who intentionally or knowingly fails to comply with any order under sub-section (1) shall be guilty of an offence and shall be liable on conviction to imprisonment for a term not exceeding two years or a fine not exceeding one lakh rupees or both.”

8. It is essential to observe that along with the petition were placed certain photographs by the petitioner which vide order dated 22.05.2018 were directed to be placed in a sealed cover by the Registry with direction to the State to make an endeavour to ensure that the photographs placed on record if already uploaded in any form on the social media, are got removed from there. This was so as much as a submission on behalf of the State had been made during the course of the proceedings dated 22.05.2018 that in the photographs of the petitioner sought to be placed on record, there were gross obscenities sought to be shown.

9. The status report dated 28.05.2018 submitted by the State indicates that the petitioner joined the investigation on 25.05.2018 and produced his mobile phone with the CD and the same were seized vide a seizure memo and deposited in mallkhana and that though he has joined the investigation, he did not assist the investigation in any manner and that the custodial interrogation of the petitioner was required for verification of all addresses where he lived with prosecutrix and the source of pills used for abortion was to be ascertained and that the release of the petitioner would be a threat to the victim and other witnesses who have supported the prosecutrix

version.

10. A bare perusal of the document at page 74 of the petition, which has been placed on record by the petitioner shows gross obscenities, which is stated to have been uploaded on the social media, which is sufficient to negate the grant of bail in the instant case coupled with the factum that the allegations in relation to the alleged commission of the offence punishable under Section 328 of the Indian Penal Code, 1860 in the instant case where the prosecutrix has been allegedly given a heavy dose of anti depressant pills, which requires custodial interrogation despite the contention of the petitioner that the physical relations between him and the complainant, if any, were only consensual.

11. Reliance thus placed on behalf of the applicant on the catena of verdicts relied upon to contend that he be released on anticipatory bail in as much as physical relations, if any, between him and the prosecutrix were only consensual does not assist him, in the facts and circumstances of the instant case.

12. The application seeking grant of anticipatory bail is thus declined.

ANU MALHOTRA, J

JUNE 1, 2018/MK