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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ BAIL APPLN. 1895/2018, CrI. M. (BAIL) 1260/2018
SUSHIL KUMAR YADAV

..... Petitioner

Through: Mr. Amit Anand Tiwari, Adv.

versus

STATE OF NCT OF DELHI

..... Respondent

Through: Mr. Rajat Katyal, APP for State with SI
Buglesh, P.S. Govindpuri.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

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04.12.2018

The petitioner seeks bail. On 29.08.2018 and 04.10.2018, following orders were passed:

Order dated 29.08.2018:

*“The learned counsel for the petitioner submits that the complainant herself admits that she was married to the petitioner. After the parties have lived together for almost 7 years, the said physical relationship would not result in any offence under Section 376 of the IPC. Furthermore, he relies upon the dicta of the Supreme Court in **Shivashankar @ Shiva vs. State of Karnataka & Anr.** CrI Appeal No. 504/2018(arising out of SLP CrI.No.454/2017), which, inter alia, reads as under:*

“It is, however, difficult to hold sexual intercourse in the course of a relationship which has continued for 8 years as rape especially in the face of the complainant’s own allegation that they lived together as man and wife.”

He further submits that once the issue of rape is out of the reckoning, the next point is whether unnatural sexual offence under section 377 of the IPC was made out against him and for his consequent judicial custody. The complainant has allegedly performed oral sex with her on 28.06.2018. Referring to section 375 IPC, the learned counsel submits that it would not constitute unnatural sexual offence, as contemplated under section 377 IPC. Therefore, his being charged for the said offence is without any basis and his current judicial custody, would not be warranted under that provision of law.

Opposing the grant of bail, Mr. Chadha, the learned APP for the State submits that: i) all arguments addressed thus far are primarily relating to charges not being maintainable against the petitioner; ii) the arguments are perhaps premature and iii) the occasion for doing so would arise only after the Chargesheet is filed. He expects it to be filed within three weeks from today. Let it be done. He further submits that the petitioner has trifled with the emotions of the complainant and indulged in the aforesaid offences wantonly; in the first instance he had married the complainant but before long, he abandoned her; in less than two months thereafter, he married another lady in Bihar, in a marriage ceremony involving relatives of both parties. He submits that the petitioner has cohabitated with the second lady as well, therefore, the offences against him are grave and that he should not be granted bail.

List on 04.10.2018.”

Order dated 04.10.2018:

*“The learned counsel for the petitioner reiterates what has been recorded in the previous order i.e. if the complainant alleges marriage then the offence under section 376 IPC would not be made out; that the second marriage would not be punishable any longer in view of the recent judgment of the Supreme Court in **Joseph Shine***

v. UOI [W.P. (Crl.) No. 194 of 2017] and that, at worst, it can be termed as bigamy for dissolution of the first marriage but it would not make out a case for prosecution of the petitioner under section 376 IPC.

Mr. Amit Chadha, the learned counsel for the State submits that Chargesheet stands filed.

List on 15.11.2018.”

On 27.11.2018, when the case was listed for arguments on charge before the learned Trial Court, it was adjourned to 12.12.2018. The learned counsel for the petitioner submits that when the relationship between the parties culminated into marriage, as has been accepted by the complainant, then all allegations under section 376 IPC would dissolve as there would be an implied condonation of the alleged previous acts of the petitioner. He submits that at best, the complainant could have a case that she was misled into physical relations on the promise of marriage, therefore, once the promise has been kept and the parties have married, then there could be no basis for the complaint. He contends that the second marriage of the petitioner with another “unsuspecting lady in Bihar” could at best be a case for bigamy, which is a bailable offence and that by itself, could not be a reason to keep the petitioner incarcerated for an unending period; the petitioner has been behind bars for the past five months. Therefore there could be no occasion of his having tampered with the prosecution evidence whatever it may be; the petitioner undertakes to abide by such terms and conditions, as may be imposed by this Court should bail be granted.

The learned counsel for the petitioner further submits that although the petitioner accepts the first marriage with the complainant, he had married the complainant under pressure. The inference to be drawn from

this statement is that the said marriage was void *ab initio* because it was without his consent.

The Court is of the view that if that were the case, it was open to the petitioner to have made it known to some authority in law that he was coerced to “marry” the complainant. If the petitioner did not regard the marriage as a valid marriage but continued to cohabit with the complainant as her spouse and pretended to the world that they were married, then his falsely posing so would tantamount to inflicting continued cruelty and fraud upon the complainant.

The nature of the allegations are serious. In the circumstances, bail is denied. The petition is dismissed.

NAJMI WAZIRI, J

DECEMBER 04, 2018/acm