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

+ **BAIL APPLN. 2408/2018**

PRASHANT BHARTIYA

..... Petitioner

Represented by: Mr. Pradeep Gupta, Mr. Parinav
Gupta and Ms. Mansi Gupta,
Advocates.

versus

STATE & ANR.

..... Respondent

Represented by: Ms. Meenakshi Chauhan, APP with
SI Renu Hooda, PS Vijay Vihar.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

12.12.2018

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1. By this petition, the petitioner seeks anticipatory bail in case FIR No. 616/2018 under Section 376 IPC.
2. Allegations of the complainant in the FIR in question are that her husband passed away in 2011. Later in 2013 she came in contact with the petitioner who informed her that his wife could not deliver a child due to which he is divorcing her and wants to marry the complainant. On 30th December, 2013, they got married and started living together at a rented accommodation in Mahendera Park, Delhi. Petitioner used to come home once in a week and when the complainant inquired he would say that it was due to his job profile as he had to visit different places.

3. On 3rd August, 2018 the complainant gave birth to a male child and soon after the birth of the child, petitioner asked the complainant that he wanted to show his son to his mother which the complainant refused that the child was too young and that after sometime both of them would go to meet his mother on which the petitioner got angry and did not come back to home. After three days, the petitioner asked the complainant to hand over the son as he wants to give him to his first wife, which the complainant resisted and alleges that she was used by the petitioner to get a child from her.

4. Learned counsel for the petitioner has placed on record material to show that the complainant was first married when she was aged 16 to 18 years and from the wedlock a son was born who is presently 23 years old. However, the first husband of the complainant passed away whereafter she solemnised the second marriage with one Ritesh Dewal in Arya Samaj Mandir on 5th February, 2010. On 16th June, 2018 the complainant lodged FIR No. 224/2016 under Section 498A/406/174A/34 IPC against Ritesh Dewal and other family members. The proceedings qua mother-in-law and sister-in-law has quashed, however, Ritesh Dewal has been declared a proclaimed offender. It is thus contended that the marriage between the complainant and Ritesh Dewal subsists as on date.

5. Petitioner was married to one Surbhi on 11th December, 2010 which marriage was attended by the complainant as she was residing in the same building on a different floor. Photographs of the said marriage have been placed on record.

6. He has further pointed out to an agreement arrived at between the petitioner and the complainant about their live in relationship wherein both of them have agreed to live together on mutual consent and terms wherein the petitioner had clearly stated that he does not have a child and in case the complainant gives birth to the child both of them will give affection and care to the child and look after his education expenses.

7. The agreement also stated that both the parties were living in the relationship since 2013, however, on 13th June, 2017 the agreement has been reduced into writing to give a legal recognition to their relationship. The petitioner also agreed to take care of his wife throughout her life and that the second party would have no inheritance right over the property of the petitioner in case he dies, however, if a child is born from the live in relationship he/she will have inheritance rights in accordance with law.

8. In the backdrop of the facts noted hereinabove and the agreement arrived at between the parties, learned counsel for the petitioner contends that admittedly the complainant was not divorced from her second husband and hence there could be no legal marriage between the petitioner and respondent No. 2 much less a promise of marriage. The parties were together in a live in relationship which was accepted and no offence under Section 376 IPC is made out.

9. On a query put by this Court to learned APP for the State as to whether during the course of investigation it has been verified whether the complainant was divorced from her second husband to which the reply by the learned APP is that no divorce has been granted nor any declaration passed. Secondly, during the investigation the complainant also admitted the

agreement dated 13th June, 2017 between the parties copy whereof is annexed as annexure P-2 to the present petition wherein terms as noted above have been reduced.

10. Considering the facts noted above and pleas taken by the petitioner which are not disputed during the course of investigation, this Court deems it fit to grant anticipatory bail to the petitioner.

11. It is, therefore, directed the petitioner be released on bail on his furnishing a personal bond in the sum of ₹25,000/- with one surety bond of the like amount, subject to the satisfaction of the Arresting Officer/SHO concerned, further subject to the condition that the petitioner will join the investigation as and when directed by the Investigating Officer and in case of change of residential address the same will be intimated to the Court concerned by way of an affidavit.

12. Petition is disposed of.

13. Order dasti.

MUKTA GUPTA, J.

DECEMBER 12, 2018
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