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

+ **BAIL APPLN. 3205/2019**

KARAN BAKSHI Petitioner

Through: Mr. Vikas Jain, Adv.

versus

THE STATE (NCT OF DELHI) Respondent

Through: Mr. Panna Lal Sharma, APP for State
with ASI Jai Prakash, PS – Jagat Puri

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

ORDER

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24.12.2019

CRL.M.A. 43585/2019

1. Allowed, subject to all just exceptions.
2. Application is disposed of.

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3. Present petition is filed under Section 438 Cr.P.C. read with 482 Cr.P.C. for the grant of anticipatory bail in the case FIR No. 185/2019 registered at Police Station – Jagat Puri for the offences punishable under Sections 406/498-A/34/377 IPC.
4. Brief facts of the case, as stated in the present petition, are that the complainant married to the petitioner on 15.02.2017 and just after one month, w.e.f. 15.03.2017 both started residing separately and no cohabitation took place between them since 15.03.2017. On 31.03.2018 both

parties entered into an hand written as well as typed settlement deed for seeking divorce by mutual consent which was duly witnessed by grant father and maternal uncle of the complainant, respectively.

5. On 05.04.2018, the complainant and petitioner filed the petition under Section 13 (B) (1) of the HMA, which was listed on 09.04.2018 but on the said date, none appeared due to strike of lawyers. On 24.05.2018, the complainant withdrew the petition giving reason that she does not want to give divorce. Thereafter, complainant filed the present complaint in CAW cell on 28.06.2018, after about one year and 3 months of separation. Thereafter, the present FIR had been registered on 19.07.2019.

6. Consequently, petitioner received the notice under Section 41 (A) Cr.P.C. by concerned IO and then the petitioner filed the bail application under Section 438 Cr.P.C. for seeking anticipatory bail and the Additional Sessions Judge, Karkardooma Court, Delhi Vide order dated 27.11.2019, granted the interim protection to the petitioner till 16.12.2019 and asked the petitioner to join the investigation on 29.11.2019.

7. The petitioner joined the investigation as directed and then the above mentioned application of petitioner again came for hearing on 16.11.2019 before the District and Sessions Judge, Shahdara District, Delhi. On that date, the IO of the case for the first time stated before Court that he has not yet received the permission to arrest the petitioner from the concerned court and in view of his statement, the Court gave the protection to the petitioner for 7 days notice period, before the IO wants to arrest the petitioner.

8. The petitioner was served the notice by IO on 19.12.2019 and thereafter the petitioner again filed the bail application under Section 438

Cr.P.C. for seeking anticipatory bail and the same was declined by the District and Sessions Judge, Shahdara District, Delhi vide order dated 21.12.2019.

9. Learned counsel for the petitioner submits that the marriage of the petitioner with the complainant was solemnised on 15.02.2017. However, since 15.03.2017, complainant and the petitioner are living separately. They have not co-habited with each other. The present case has been filed by the complainant in order to further harass the petitioner and his family members. He further submits that the parties had entered into written settlement dated 31.03.2018, which was duly signed by Sant Lai Arora, Shri Mulakh Raj Gaba from complainant's side. On 31.03.2018, a typed settlement deed was also entered into between the complainant and the petitioner.

10. Learned counsel for the petitioner has also drawn the attention of this Court towards the order dated 16.11.2019 of the learned Trial Court, whereby at request of the learned counsel for the complainant, the protection officer was directed to accompany the complainant for her matrimonial house to enabling her to search and obtain her clothes, certificates and passport on 20.11.2019 at 11 AM. However, the protection officer was granted liberty to seek police assistance in the present case. The complainant was not available on the said date, therefore, the house could not be searched.

11. On the other hand, learned APP appearing on behalf of the State, on instructions from the complainant, submits that the settlement and the first motion of the divorce was filed under the pressure of the family. Therefore, whatever is stated in the settlement and the first motion filed before the

Judge, shall not be taken into consideration. Moreover, the dowry articles are with the petitioner which may be directed to be recovered from him.

12. Regarding the above, learned counsel for the petitioner submits that in on 16.11.2019 before the learned Trial Court, the learned counsel for the complainant only sought clothes, certificates and passport which were to be taken from the matrimonial house. It is nowhere mentioned by the complainant that her jewellery is also with the petitioner knowing well that she already had all the jewellery with her. However, the remaining articles which were given, were given as gift to the family members of the petitioner and thus, the said items are not the dowry articles. Learned counsel for the petitioner, on instructions, submits that if the settlement takes place, the petitioner is ready to return the articles mentioned therein to the complainant.

13. Keeping in view the fact that the first motion filed before the learned Sessions Judge alongwith the affidavit wherein it is stated that the petitioner and the complainant married on 15.02.2017 and just after one month i.e. 15.03.2017, both have been residing separately and no cohabitation has taken place between them since 15.03.2017. Thereafter, first motion was filed and withdrawn by the counsel and only thereafter, she approached the CAW Cell on 28.06.2018, after which her complaint culminated into the present FIR.

14. It is not in dispute that the petitioner had been interrogated and joined the investigation pursuant to the directions passed by the learned Trial Court. Thus, he is not required for further investigation.

15. However, at this stage, without commenting on the merits of the case,

I am of the opinion that the petitioner is entitled for anticipatory bail.

16. Accordingly, the SHO/Arresting Officer/IO concerned, is hereby directed that in the event of arrest, the petitioner be released on bail on furnishing a personal bond in the sum of ₹25,000/- with one surety in the like amount subject to the satisfaction of Arresting Officer/SHO/IO concerned.

17. Before parting with the order, it is relevant to mention that nothing contained in this order shall be construed as an expression on the merits of the case.

18. Application stands allowed and disposed of.

19. Order *dasti* under signatures of the Court Master.

SURESH KUMAR KAIT, J

DECEMBER 24, 2019

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