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

\+ BAIL APPLN. 3129/2019

CHANDAN ..... Petitioner

Through Mr.Sunil Kapoor, Adv.

versus

THE STATE (GOVT. OF NCT OF DELHI) ..... Respondent

Through Mr. Panna Lal Sharma, APP for State. W/SI Nisha Devi PS Patel Nagar.

CORAM:
HON'BLE MR. JUSTICE SURESH KUMAR KAIT

<u>O R D E R</u>

% **19.12.2019**

<u>Crl. M.A. 43078/2019</u>

1. Allowed, subject to all just exceptions.

2. Application is disposed of.

<u>Bail Appln.3129/2019</u>

3. Vide the present petition, the petitioner seeks anticipatory bail in the event of his arrest in pursuance to FIR No. 317/2019 registered at Police Station – Patel Nagar.

4. As per the prosecution case, on 24.09.2019, the prosecutrix attempted to commit suicide by injecting multiple tablets of Approx tablets (9) consequently she got admitted in Lady Harding Hospital, New Delhi. She made statement to the police that in the year 2006, she became friends with Sunil Kumar resident of Baljeet Nagar, New Delhi and thereafter he started to visit to her house. In July 2016, Sunil Kumar came to her house in the noon and he forcibly maintained physical relations with her, without her consent and threatened her to keep mum. Thereafter, accused Sunil Kumar started to visit her garments shop at Karol Bagh. Apprehending defamation,

she used to send him for purchasing clothes for her shop and used to hand over two cheques to him so that in case one cheque becomes unusable, the other cheque may be utilized. The accused used to keep the second cheque with him and in this manner, he kept 6-7 cheques and thereafter the accused Sunil Kumar again pressurized her to make physical relations with him. He also provided those cheques to Vijay Tailor and Sugandha and all three of them filed cheque bounce cases against the prosecutrix.

5. Learned counsel appearing on behalf of the petitioner submits that the petitioner and his father are doing the business of contractor and construction of houses in collaboration in Delhi. The prosecutrix is a divorcee and resides in the neighbourhood of the Petitioner, who became friendly to his mother. In the month of October-November, 2016, the prosecutrix proposed to the mother of Petitioner for starting a shop/showroom of ladies clothes in partnership but the mother of Petitioner refused, due to her family liabilities. The prosecutrix then requested the mother of Petitioner to give her friendly loan for running the aforesaid business and assured her to return their money with interest when the business will start giving back income. The prosecutrix took friendly loan amounting Rs. 35,00,000/- from the father of Petitioner and Rs.5,00,000/- from the mother of Petitioner on different dates from December, 2016 to February - March, 2018 and invested the aforesaid loan amount in her shop/showroom of ladies wears, which she is running under the name and style of M/s R.S. Garments in a rented shop No.2538/6, Ajmal Khan Road, Karol Bagh, New Delhi.

6. It is further submitted that as and when the parents of the Petitioner demanded their money back from the prosecutrix, she issued cheques in

favour of father and a cheque in favour of mother of the Petitioner. As such, prosecutrix has issued seven cheques of different banks. However, on demand of the loan amount back, the prosecutrix issued three cheques dated 30.01.2017, 26.03.2018 and 10.04.2018 for Rs.20,000/-; Rs.2,00,000/- and Rs.5,00,000/- respectively in favour of father of the Petitioner. She issued cheques dated 20.04.2018 for Rs.5,00,000/- in favour of Mrs. Sugandhi Devi, mother of the Petitioner to discharge her loan liability. The prosecutrix also issued cheque dated 15.04.2019 for Rs.7,00,000/- in favour of father of the petitioner in order to discharge her loan liability. However, on presentation, the cheques were dishonoured due to "*Payment Stopped by Drawer*" or "*Funds Insufficient*". Accordingly, the parents of Petitioner have filed three complaint cases under section 138 of N.I. Act in the concerned courts against the prosecutrix and the same are pending trial. However, about a week prior to the registration of the present FIR, father of the Petitioner told the prosecutrix that two post dated cheques for Rs.11,00,000/- and Rs.10,00,000/- issued to him are still pending to be encashed and he shall present the same to the banker next week and the father of Petitioner also warned her that in case those cheques are dishonoured, he will file cases under N.I. Act as well as criminal cases of cheating against her. On presentation of both the cheques, they have been dishonoured on 27.11.2019 due to payment stopped by drawer and on 05.12.2019, on the ground of insufficient funds by the banker and father of the Petitioner is going to file complaint cases under Section 138 of the N.I. Act after complying relevant provisions of the Act.

7. Learned counsel further submits that apart from the present case, the prosecutrix has taken loan of Rs.50,000/- from one Vijay Kumar r/o T-520,

Mandir Marg, Baljeet Nagar, New Delhi and to discharge her loan liability, the prosecutrix issued cheque for Rs.50,000/- in his favour. The cheque was dishonoured and Shri Vijay Kumar has filed a Complaint Case No. 4158/2018 which is pending trial in the Court of Ld. MM, Tis Hazari Court, Delhi and is now fixed for 07.01.2020.

8. Learned counsel submits that the prosecutrix has not been paying rent of her rented shop, where she is running shop of ladies garments at Ajmal Khan Park, Karol Bagh, New Delhi. Consequently, the landlord has filed a civil suit against the prosecutrix vide No.DJ/1359/2018 which is pending in the court of learned ADJ, Tis Hazari Court, Delhi.

9. Counsel for the petitioner has pointed out that on 04.10.2019, statement of the prosecutrix was recorded under section 164 Cr.P.C. i.e. after about 10 days from the registration of the present FIR and the prosecutrix have implicated the Petitioner and his mother in commission of rape. However, the prosecutrix did not make any allegations against the Petitioner in any manner in her statement, based upon which FIR has been registered. On 25.09.2019, the police arrested father of the Petitioner, in the present case, and on 15.10.2019, he was granted bail under section 439 Cr.P.C. by learned Additional Sessions Judge, Tis Hazari Court, Delhi.

10. It is further submitted that the prosecutrix is also stated to have implicated Vijay Tailor for harassing and quarrelling with her in her statement under section 164 Cr.P.C., who has been granted anticipatory bail by learend ASJ, Tis Hazari Courts, Delhi on 23.10.2019. After statement of prosecutrix under section 164 Cr.P.C, the Investigating Officer did not take any action against the Petitioner and his mother but after granting bail to the father of the Petitioner on 15.10.2019, the police of Police Station Patel

Nagar started visiting the house of Petitioner to arrest him and his mother. The petitioner and his mother came to know that the prosecutrix has falsely implicated them in her statement under section 164 Cr.P.C which was recorded after about 10 days of the alleged FIR, then the petitioner and his mother moved anticipatory bail application which came up for hearing on 25.10.2019 before learned ASJ, Tis Hazari Courts, Delhi. The prosecutrix appeared in person to oppose the anticipatory bail applications, however, learned ASJ admitted the Petitioner and his mother to interim anticipatory bail till 25.11.2019 with the direction to the Investigating Officer to get the Lie Detection Test of the accused/Petitioner and the prosecutrix to find out the truth and produce the result of test on 25.11.2019.

11. Learned counsel submits, before that on 18.10.2019, the Investigating Officer served notice under section 41-A Cr.P.C. to the Petitioner and his mother to join the investigation and accordingly, they were thoroughly interrogated at police station on that date and the Investigating Officer got the blood sample of the Petitioner and his father for purpose of investigation. On 25.11.2019, anticipatory bail applications of the Petitioner and his mother came up for hearing and the Investigating Officer submitted the Status Report mentioning therein that *"during investigation, the alleged Chandan (petitioner) and Sugandha Devi (mother of the Petitioner) joined investigation and have been interrogated and the Lie Detector Test date has been fixed for 7-10 Jan, 2020"*. However, the learned ASJ granted anticipatory bail to the mother of Petitioner but dismissed the application of Petitioner.

12. Learned APP appearing on behalf of the State submits that though in the first statement based upon which an FIR has been lodged, the prosecutrix

did not make any allegation against the petitioner and other accused, however, she made only allegation against father of the petitioner. But, in the statement recorded under section 164 Cr.P.C., she named the other accused also.

13. In view of the facts discussed above, I am of the considered view that had any offence been committed by other co-accused including the petitioner, then the prosecutrix would have mentioned the names of all the accused in the very first statement. However, she failed to do so and named the accused subsequently which seems to be after thought.

14. However, without commenting upon the merits of the case, this Court is of the considered view that the present case is fit for anticipatory bail. The SHO/IO concerned, is hereby directed that in the event of arrest, the petitioner be released on bail on the following terms and conditions:-

(i) The petitioner shall furnish a personal bond in the sum of ₹25,000/- with one surety in the like amount subject to the satisfaction of SHO/IO concerned;

(ii) He shall cooperate with the investigation and make himself available for interrogation by police officer, as and when required;

15. In case of default of aforementioned conditions, the State is at liberty to take appropriate recourse in accordance with law.

16. The petition is accordingly, allowed and disposed of.

17. Order dasti under signatures of the Court Master.

SURESH KUMAR KAIT, J

DECEMBER 19, 2019/ab