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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **BAIL APPLN. 739/2019 & CRL.M.A. 6171/2019**

JAVED

..... Petitioner

Through: Mr. Mohit Mathur, Senior
Advocate with Mr. Rishabh Sahu,
Advocate.

Versus

STATE (GOVT OF NCT OF DELHI) Respondent

Through: Ms. Neelam Sharma, Additional
Public Prosecutor for State with
W/SI Reena.
Mr. Mohammad Sajid, Advocate
for complainant.

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

ORDER

20.03.2019

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Petitioner seeks pre-arrest bail in FIR No. 57/2019, under Sections 376/328/506 of IPC, registered at police station Dayal Pur, Delhi while claiming to be innocent.

Learned Senior Counsel for petitioner contends that relationship between petitioner and prosecutrix, aged about 23 years, was consensual. To submit so, attention of this Court is drawn to whatsapp messages (*Annexure P-3*). Reliance is placed upon, Supreme Court's decision in '*Uday Vs. State of Karnataka*' (2003) 4 SCC 46 to submit that promise of marriage would not bring the case within the ambit of Section 376 of IPC. It is further submitted that since the relationship of petitioner with prosecutrix had turned sour, therefore, he has been falsely implicated in this case.

On the contrary, learned Additional Public Prosecutor for respondent-State has shown the statement of prosecutrix recorded under Section 164 of Cr.P.C. to submit that initially petitioner had established sexual relationship with prosecutrix after putting some intoxicant in the cold drink and later on petitioner had blackmailed her with the threat of showing video of their relationship and on the promise of false marriage. It is submitted that few days prior to petitioner's marriage with another girl, petitioner had established sexual relationship with prosecutrix, so it is submitted that it is not a fit case for grant of pre-arrest bail.

Upon hearing and on perusal of FIR of this case, statement of prosecutrix recorded under Section 164 of Cr.P.C. and decision cited, I find that in the instant case, petitioner had no intention to marry prosecutrix and had repeatedly raped her by blackmailing her with threat to show the video of sex between petitioner and prosecutrix. Reliance placed by petitioner's counsel on Supreme Court's decision in *Uday Vs. State of Karnataka* (2003) 4 SCC 46 is of no avail, as in the said decision the prosecutrix was deeply in love with the accused, whereas it is evident from prosecutrix's statement under Section 164 of Cr.P.C. that initially petitioner had established sexual relations with prosecutrix after mixing something in her cold drink. So, it *prima-facie* appears that the consent of prosecutrix was not voluntarily. Conduct of petitioner dissuades this Court not to extend the concession of pre-arrest bail to petitioner.

So far as, the whatsapp chat (*Annexure P-3*) and photographs (*Annexure P-4*) are concerned, they cannot be relied upon on the face of it. Whatsapp chat (*Annexure P-3*) stands explained by prosecutrix, as according to her, she was trapped by petitioner on the false promise of

marriage. In the light of the aforesaid, this Court is of the considered opinion that it is not a fit case for grant of pre-arrest bail to petitioner.

The applications are accordingly dismissed, while not commenting upon the merits of this case.

(SUNIL GAUR)
JUDGE

MARCH 20, 2019
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