

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

Date of Order: April 05, 2019

+ **BAIL APPLN. 875/2019 & CRL.M.As. 7237-38/2019**

MAHESH KUMARPetitioner

Through: Mr. Biswajit S. and Mr. Deepak
Tyagi, Advocates

Versus

THE STATE (GOVT. OF NCT OF DELHI) Respondent

Through: Mr. M.P. Singh, Additional Public
Prosecutor for State with W/SI
Jyoti Singh

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

ORDER

(ORAL)

Petitioner seeks pre-arrest bail in FIR No. 39/19, under Section 376/506 of IPC, registered at police station R.K.Puram, Delhi while claiming that there is delay of twelve years in lodging this FIR. It is pointed out that the relationship between petitioner and prosecutrix was consensual.

Learned counsel for petitioner places reliance upon Supreme Court's decision in *Dr. Dhruvaram Murlidhar Sonar vs. The State of Maharashtra & Ors.* 2019 [1] JCC 217 [SC]. He further submits that petitioner is working as a cleaner with Northern Railways and since he has now married elsewhere, therefore, he has been implicated in this case belatedly. Attention of this Court is drawn to a photograph (*Annexure P-*

5) to point out that prosecutrix had even attended the marriage ceremony of petitioner's sister. Pre-arrest bail is sought while relying upon order of a Coordinate Bench of this Court in *Bhushan Lal Khanna vs. (Govt. of NCT of Delhi)* 2019 AD (DELHI) 163.

Learned Additional Public Prosecutor for respondent-State opposes the application by drawing the attention of this Court to prosecutrix's statement recorded under Section 164 of Cr.P.C.

Upon hearing and on perusal of the FIR, statement of prosecutrix recorded under Section 164 of Cr.P.C. and the decisions cited, it appears that prosecutrix was not a consenting party. The stand of prosecutrix is that she was forced by petitioner to establish sexual relations with him and that petitioner had been misguiding her and was giving false hope to her in all these years. So, the delay in lodging of FIR by itself would not justify grant of pre-arrest bail to petitioner. Statement of prosecutrix recorded under Section 164 of Cr.P.C. belies the stand taken on behalf of petitioner. Reliance place upon order of Coordinate Bench of this Court in *Bhushan Lal (Supra)* is misplaced as the said order is distinguishable on facts. In *Dr. Dhruvaram Murlidhar Sonar (Supra)* the charge-sheet for the offence of rape was quashed as the accused had agreed to marry prosecutrix and it was not a case of forcibly raping the prosecutrix. In a somewhat similar case, a Coordinate Bench of this Court in *Gaurav Shukla vs. State* 2015 (4) JCC 2728 has declined pre-arrest bail to the accused.

In the facts and circumstances of this case, I do not find it to be a fit case to extend the concession of pre-arrest bail to petitioner.

Accordingly, the applications are dismissed while not commenting on the merits of this case.

**(SUNIL GAUR)
JUDGE**

APRIL 05, 2019

v

