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

Date of decision: 21.10.2019

+ BAIL APPLN. 1393/2019

UPWAN CHHABRA

..... Petitioner

Through Mr. Rajiv Mohan, Advocate with
Mr. Abhimanyu Kampani, Ms.
Swapnil Krishna and Ms. Nipun,
Advocates.

versus

STATE

..... Respondent

Through Mr. G.M. Farooqui, APP for the
State with SI Anil Rathod PS
Greater Kailash.
Mr. Sangam Kumar, Mr. Sanjay
Diwakar and Mr. Vikash Kumar,
Advocates.

CORAM:

HON'BLE MR. JUSTICE BRIJESH SETHI

JUDGMENT

BRIJESH SETHI, J (*Oral*)

BAIL APPLN. 1393/2019 & CRL.M.A. 35670/2019

1. This is an anticipatory bail application filed by the petitioner in FIR No. 105/2019, under Section 376/323/506/509/34 IPC, PS Greater Kailash.

2. The petitioner has prayed for anticipatory bail on the ground that he is innocent and has been falsely implicated in this case. He has no criminal

antecedent and the allegations levelled by the victim/complainant against him are false. It is further submitted that petitioner is a married man having a young child and no useful purpose would be served by sending him to jail.

3. Learned APP for the state has opposed the bail application on the ground that the allegations against the petitioner are serious in nature. He has indulged in sexual intercourse with the complainant on the assurance that he will marry her. He had assured the complainant that since he is unhappy with his marriage, he would divorce his wife and will marry the complainant thereafter. It is further submitted that there are allegations that petitioner is trying to influence the witnesses and threatening the complainant to withdraw the case. The complainant is a foreign national (Czech Republic) and has shifted her place of stay twice in search of peace and security but is followed by some strangers. She has apprehension that accused, if granted bail, could tamper with the evidence.

4. Learned counsel for the petitioner has submitted that even though the charge-sheet has been filed in this case, this court can decide anticipatory bail application. In this regard, he has relied upon a case titled as **“Bharat Chaudhary & Ors. Vs. State of Bihar”**, Crl. Appeal

No. 1250 of 2003 arising out of SLP(Crl.) No. 2243 of 2003) wherein the Hon'ble Supreme court has held that there is no restriction or absolute bar on the concerned court granting anticipatory bail even in cases where either cognizance has been taken or a charge-sheet has been filed. He has, therefore, argued that he be granted anticipatory bail and protection till his regular bail application is heard by the learned Trial Court.

5. Ld. Counsel for the petitioner has further relied upon case titled as **"State vs Sandeep", Crl.L.P. 532/2019**, wherein the Hon'ble Court has held that it is difficult to accept that continuing with an intimate relationship, which also involves engaging in sexual activity, over a significant period of time, is induced and involuntary, merely on the assertion that the other party has expressed its intention to get married.

6. Ld. Counsel for the petitioner has further relied upon the case titled as **"Imran vs. State of Rajasthan & Anr.", SLP(Crl.) No. 9271/2011, date of order 13.01.2012**. In the said case, it was held that since the investigation is over and charge-sheet has already been filed and custodial interrogation of the petitioner is not required and there is no chance of his tampering with evidence, the accused/petitioner can be

released on bail.

7. Ld. Counsel for the petitioner has further relied upon the following case law:-

- 1).*Arif Iqbal vs. State, Crl. BA 2145/2009*;
- 2).*Prem Prakash Chaudhary vs. State (Bail Appl N. 157/2018)*;
- 3).*Rohit Chauhan vs. State (Bail A.No. 311/2013)*;
- 4).*Jai Prakash Singh vs. State of Bihar, (2012) 4 SCC 379*;
- 5).*Tameezuddin @ Tammu vs. State (2009) 15 SCC 566*;
- 6).*Shivashankar @ Shiva vs. State NCT of Delhi (2008) SCC 3106*.

8. I have heard the rival submissions and gone through the above case law cited by learned counsel for the petitioner. There is no quarrel with the proposition of law laid down therein. However these cases are distinguishable on the basis of the facts and circumstances stated therein. In the present case, the complainant who is a foreign national (Czech Republic) has been made to indulge in sexual activity on the pretext that petitioner will marry her after giving divorce to his wife. There are also allegations that the complainant has been threatened by the petitioner. The victim has been forced to change her place of stay twice.

9. The question which now arises for consideration is whether the petitioner is entitled to interim protection/anticipatory bail till his regular

bail application is heard by the learned Trial Court. I have gone through the material appearing on record. Very serious and grave allegations have been levelled against the petitioner. It is alleged that the petitioner had met the complainant in a party and complainant was made to believe that though petitioner is a married man but he is separated from his wife and is in the process of taking divorce. The petitioner had thereafter started visiting the complainant during odd hours and regularly established physical relationship with her by cajoling her that soon after the divorce, he would shift her to Czech Republic and will have child from her. On many occasions, petitioner used to become violent and forced the complainant to have unnatural sex with him against her wishes. The petitioner had also taken the complainant to Goa to show that he is separated from his wife and she was the only girl in his life. There also he had established physical relations with her on the pretext of marriage. The complainant had gone back to Czech Republic as her Visa had expired but he had kept asking her through video calling to come back saying that he would commit suicide. On believing that he was in love with her and would marry her, complainant had come back to India in August, 2018. However, she had come to know through

common friends that he is living with his wife and also celebrating his marriage anniversary in the month of November, 2018. When questioned, the petitioner replied that he has already filed a divorce case against his wife but did not show the papers. On 04.05.2019, the petitioner told her that he never intended to marry her and he was just using her and also threatened her that if she reveals anything to anyone, he would upload her nude and semi-nude photographs on the internet and make it viral. He also threatened that he would kill her and nobody would come to know about it since she was a foreign national. The complainant had, thereafter, filed the present FIR.

10. Perusal of the above facts, prima facie, clearly reveals that petitioner has established sexual relations with the complainant on the false promise of marriage. He has also threatened her that her nude and semi-nude photographs will be uploaded on internet. He has further threatened her that she would be killed in case she would report the matter to the police. The Hon'ble Supreme Court in the case '**Anurag Soni vs. State of Chhattisgarh, 2019 SCC Online SC 509**' has distinguished between offence of rape and consensual sex and has made the following observation in para 32;

“Thus, there is a clear distinction between rape and consensual sex. The court, in such cases, must very carefully examine whether the complainant had actually wanted to marry the victim or had mala fide motives and had made a false promise to this effect only to satisfy his lust, as the later falls within the ambit of cheating or deception. There is also a distinction between mere breach of a promise and not fulfilling a false promise. If the accused has not made the promise with the sole intention to seduce the prosecutrix to indulge in sexual acts, such an act would not amount to rape. There may be a case where the prosecutrix agrees to have sexual intercourse on account of her love and passion for the accused and not solely on account of the misconception created by accused, or where an accused, on account of circumstances which he could not have foreseen or which were beyond his control, was unable to marry her despite having every intention to do. Such cases must be treated differently. If the complainant had any mala fide intention and if he had clandestine motives, it is a clear case of rape. The acknowledged consensual physical relationship between the parties would not constitute an offence under Section 376 of the IPC.”

11. The facts of the present case clearly reveal that there was a false promise of marriage and the complainant was kept under dark and sexual relations were established with her. It is an admitted case of the petitioner that he had also contacted the complainant on Whatsapp. There is an apprehension that if released on bail, petitioner will try to influence and threaten the complainant. Keeping in mind the facts and circumstances of the case and particularly the fact that a foreign national (Czech Republic) has been raped on the false pretext of marriage and has

further been threatened, no grounds for interim protection/anticipatory bail are made out till the appearance of the petitioner before the Ld. Addl. Sessions Judge where his regular bail application will be heard.

12. The application is, therefore, dismissed.

13. Petition stands disposed of accordingly.

BRIJESH SETHI, J

OCTOBER 21, 2019

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