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

+ **BAIL APPLN. 2986/2019**

VIRENDER KUMAR MATHURIYA Petitioner
Through Mr. Adit S. Pujari, Adv.

versus

STATE Respondent
Through Mr. Hirein Sharma, APP for State
SI Shiv Prakash, PS Anand Parvat

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

ORDER

% **03.12.2019**

CRL.M.A. 41680/2019

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

BAIL APPLN. 2986/2019

2. Vide the present petition/accused seeks bail in FIR No. 276/2018, registered at Police Station Anand Prabat for the offences punishable under Section 376/306/34 IPC.

3. The case of the prosecution is that on 23.10.2018 at about 12 – 12:15 P.M., the daughter of complainant, namely Abhilasha, locked herself in the room and set herself ablaze. The complainant alleged that on account of the petitioner not marrying her daughter, she put herself on fire and had earlier also consumed sleeping pills.

4. Accordingly, the FIR was registered against the petitioner. The petitioner was arrested by the police on 03.04.2019 and since then he is in judicial custody. The charge sheet of the case has been filed and the case is fixed for filing of handwriting expert opinion from CFSL.

5. The case of the petitioner is that prosecution has placed reliance upon the alleged suicide note of the deceased where it is specifically mentioned that the deceased had married the petitioner. It is also specifically mentioned that the deceased and the petitioner established sexual relationship after three years of their marriage. Since the sexual relationship was established with the consent of the deceased, no offence under Section 376 IPC is made out against the petitioner.

6. Learned counsel submits that there is no evidence that the petitioner established physical relationship with the deceased under the false pretext of marriage and later did not marry her. As per the contents of the suicide note it is alleged that the petitioner, after marrying the deceased, refused to accept her as his wife.

7. Learned counsel further submits there is no legally admissible evidence to suggest that the petitioner ever abetted the deceased for commission of suicide or ever instigated the deceased to commit suicide. There is no evidence that the petitioner by his acts of omission or by a continued course of conduct created such circumstances that the deceased was left with no other option, except to commit suicide. Thus, petitioner deserves to be released on bail.

8. On the other hand, learned APP submits that the petitioner married the deceased and had physical relations on the pretext that he will fulfill all obligations of marriage. However, he refused to accept it before the society. Learned APP further submits that the chargesheet has been filed and charges are yet to be framed and the vital witness i.e. mother of the deceased is yet to be examined, therefore, the petitioner may not be released on bail, at this stage.

9. As per the suicide note recovered by the investigating agency, it is stated therein that she tried her best to live but she could not control herself. She got a big shock that she could not control herself even after trying her best. She holds the petitioner (Virender) and his whole family responsible for this. Whatever has happened with her is due to petitioner's family. She loved the petitioner a lot but he cheated on her and broke every promise which he made. Perhaps, there was something lacking in her love that the petitioner is roaming free after destroying her life. The petitioner did not remember her even for a moment. Whatever she and the petitioner had, she does not have any care for that. She has no desire to live. She does not know what answer to give to anyone. The petitioner promised to marry her and then openly went back on it. The petitioner married her, but denied it in front of everyone. The deceased has further written whether a marriage breaks if Mangal Sutra is broken. The petitioner cheated on her which was not expected from him. The petitioner did not only break her heart but also her trust. She requested her brother and her mother to forgive her. She was not worthy of being her daughter or sister.

10. In another suicide note, the deceased has written that she was not able to understand where she should start. She behaved very badly with the petitioner. She used to talk to many people, but she now cannot think of talking to anyone else now. She did a lot and tried to change her but did not change. When you love someone by trying to change, then it is not love. The petitioner wanted to change her but could not and instead petitioner changed himself. The petitioner was confused and was unable to understand what to do. On one side was the family of the petitioner and on other side her own family. Family is also not wrong. The truth is that she does not want to live

with the family of the petitioner and that the family of the petitioner also did not like her. The petitioner received many proposals for marriage at home. She was troubled and saddened as proposals come for everyone, but she believed that the petitioner would marry her because the petitioner had talked about it at home many times. After changing himself the petitioner cannot leave her. She further states that she understands that the responsibility of family is a big thing, but what was her fault. She had asked petitioner to elope, the truth is that she herself has not the courage to elope, then how could she make the petitioner elope. When she saw the petitioner getting away from her, that is when she had asked him to elope. She had sexual intercourse with the petitioner, though after three years. She gave the petitioner her honour, but for him this is a usual thing because every girl does this for a boy. She even became pregnant once, but after the petitioner convinced her, she consumed a tablet. Nothing remains between the petitioner and her. She gave him all the rights even gave her the right of being her husband. She knew that the petitioner would leave her, therefore she has written this letter. Now she would have no sorrows even if the petitioner left her. And in fact the truth is that she does not deserve to live with the petitioner. She requested the petitioner not to think that he did anything wrong. She has asked the petitioner to start his life and has wished him a happy life.

11. The police seized three suicide notes which established that there was love affair between the petitioner and the deceased and physical relations seems to be consensual as argued by the counsel for the petitioner. Moreover, before committing suicide, the deceased wrote three notes, thus, there was no immediate abetment.

12. Keeping in view the contents of the suicide notes of the deceased and the fact that the petitioner is in custody since 03.04.2019. The charges are yet to be framed and the trial will take its own time. However, without commenting upon merits of the prosecution case, I am of the opinion that this is a fit case for bail.

13. Accordingly, the petitioner shall be released on bail on his furnishing personal bond in the sum of ₹25,000/- with one surety of the like amount to the satisfaction of the Trial Court.

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

15. Copy of this order be transmitted to the Jail Superintendent and the Trial Court concerned for compliance.

SURESH KUMAR KAIT, J

DECEMBER 03, 2019

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