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

+ BAIL APPLN. 1722/2018 and Crl. M.A. 28431/2018

GAURAV BHAGAT @ RISHABH Petitioner

Through: Mr. Gaurav Sharma and Ms. Shreya
Pandey, Advocates

versus

STATE Respondent

Through: Mr. Kewal Singh Ahuja, APP for State
with SI Sangeeta
Mr. Ravi Chaudhary, Advocate for the prosecutrix

+ BAIL APPLN. 1724/2018 and Crl. M.A. 28434/2018

DEVINDER KUMAR @ DEV Petitioner

Through: Mr. Gaurav Sharma and Ms. Shreya
Pandey, Advocates

versus

STATE Respondent

Through: Mr. Kewal Singh Ahuja, APP for State
with SI Sangeeta
Mr. Ravi Chaudhary, Advocate for the prosecutrix

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER

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14.01.2019

The backgrounds facts and the contentions of the petitioners seeking protection in the nature of anticipatory bail were noted at length in the proceedings recorded on 25.07.2018 which read thus :-

“In the First Information Report (no.310/18) registered by police station Mukherjee Nagar on 11.06.2018 on the complaint of the prosecutrix concededly a major, allegations, inter alia, have been made of she having been subjected to gang rape by these petitioners. The said allegations are preceded by narration of certain events wherein the first captioned petitioner statedly initially stalked her, she feeling harassed and thereafter he having seduced her to accompany him to the place where he was staying at the relevant point of time leading to she having been subjected to sexual intercourse against her consent by both the petitioners, one after the other, after she had been made to consume certain antoxicating substance which had rendered her unconscious. She would also allege that in the said incident, respecting which there is no particular date indicated, her photographs in nude condition were taken, the possible use of the said photographs later being the basis of criminal intimidation. She would also allege that she was forcibly taken to Nainital on 25.05.2018 by the petitioners and another girl, she being their associate, she having accompanied them and stayed with them in a hotel on account of threats that had been extended.

The petitioners had earlier approached the court of Sessions where social media chats (on WhatsApp) and certain photographs had been shared with the investigating agency to demonstrate that the prosecutrix had been involved in an affair with the first captioned petitioner for quite some time past prior to the alleged incident. The Investigating Officer confirms that the photographs which have been shared, which include photographs of the stay and tour of Nainital, have been duly verified. The copies of the said photographs have been placed on record which prima facie seem to confirm the theory propounded by the petitioners.

In these facts and circumstances, the petitioners deserve interim protection. There shall be a restraint against their arrest till next date of hearing subject to the condition that they shall join investigation as and when called upon by the investigating agency and cooperate with the process including by handing over their respective mobile phones for forensic scrutiny...”

It is confirmed by the Additional Public Prosecutor, on instructions, from the investigating officer that the petitioners had complied with the directions in the above quoted order dated 25.07.2018 and have also been joining the investigation as and when called upon to do so.

On 19.11.2018, reference was made to a *habeas corpus* petition, then pending before a division bench of this court. It is clarified that the said *habeas corpus* petition – WP(Crl.) 3444/2018 was filed by the first petitioner on the basis, *inter alia*, of telephonic conversation recorded by him in a talk steadfastly between him on one hand and the prosecutrix on the other, this, as per his submissions, revealing that the prosecutrix had been threatened and coerced to lodge the present FIR by members of her parental family and that she was under threat to life, there being a case of threat to the life of the first petitioner as well. The matter was deferred on account of the pendency of the said *habeas corpus* petition by order dated 19.11.2018. The court is informed that the writ petition was disposed of by the division bench on 19.11.2018 taking note, *inter alia*, that the prosecutrix had chosen to reside with her parents out of her own free will and desire and there being no need for further directions in that

matter.

Be that as it may, the investigating agency with the status report dated 17.11.2018 had also annexed transcript of telephonic conversation recorded between the prosecutrix and the petitioner, the call being statedly of 13.06.2018. A perusal of the said transcript does seem to indicate that the prosecutrix had been subjected to physical assaults by members of her family against the backdrop of the events that have led to the registration of the present FIR, she seemingly not responding to certain utterances as to both of them having conducted themselves out of their own volition.

The investigation is likely to take some time to conclude. Against the noted backdrop, a case is made out for the petitioners to be admitted to anticipatory bail.

Thus, it is directed that in the event of the petitioners being arrested, they shall be released on bail by the arresting officer on furnishing personal bond in the sum of Rs.25,000/- each with one surety in the like amount subject to the following further conditions:-

- (i) The petitioners shall continue cooperating with the investigation and join the same as and when called upon to do so;
- (ii) The petitioners shall not come in contact with or try to influence any of the witnesses connected to the case;
- (iii) Prior to their release, they shall give the telephone numbers of self and of at least one other responsible family member besides that of the surety to the investigating officer;

(iv) They shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the Court or to any police officer or tamper with the evidence;

(v) They shall not leave India without the prior permission of the court of cognizance or the trial court, as the case may be, and to ensure due compliance with this condition and shall deposit their passport, if he holds one, with the said court.

This order will inure only till the date of first appearance of the petitioners in the event of a charge-sheet being filed on conclusion of the investigation and process being issued against them by the court of cognizance.

The petitions and the applications filed therewith stand disposed of in above terms.

Dasti.

R.K.GAUBA, J

JANUARY 14, 2019

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