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

+ **BAIL APPLN. 3043/2019**

SHAHBAZ KHAN

..... Petitioner

Through Mr.Lokesh Kumar Mishra and
Mr.Himanshu Sharma, Advs.

versus

STATE

..... Respondent

Through Mr. Amit Chadha, APP for State with
SI Mamta Chauhan, PS Jagatpuri
Mr.Bajrang Vats, Adv. for
prosecutrix/victim

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

ORDER
27.02.2020

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1. The present petition has been filed by petitioner for grant of bail in FIR No.205/2019 registered at Police Station Jagatpuri, Delhi for offences punishable under Sections 376-D/506/34 IPC.
2. Case of prosecution is that prosecutrix's father got married for the second time marriage and she was living with him. Her step-mother, Shahista (co-accused) used to take the prosecutrix to her parental house i.e. House No. 43, Gali No. 10, Brij Puri Extension, Parwana Road, Khajoori, Delhi. In the year 2012, one day Shahista left prosecutrix at house with Shehraj and petitioner Shahbaj, sons of her step-mother's uncle, who used to live in that house and went to market. Accused Shehraj came to her, took her to his room, removed her clothes and forcibly committed rape upon her. He continued to do the same and threatened her not to disclose to anyone

otherwise he would kill her and her father. She disclosed the said incident to her step-mother but her step-mother stated that her brothers are not like that and she is lying. Next day of incident, Shahista had to go for a party (Dawat), prosecutrix requested her to let her accompany, however, she did not agree and left her alone. Thereafter, both brothers came and Shehraj committed rape upon her and when again she disclosed the same to her step-mother (Shahista), she told her not to disclose the same to anyone. Thereafter, prosecutrix returned to her house at Darya Ganj. After some days, Shahista again went to her parental house and forcibly took her along where both her cousins raped her.

3. In the year 2015, one day Shahista told her husband that prosecutrix is having affair with her younger brother. Her father scolded her and thereafter her nikaha was performed with petitioner. No family members came and thereafter, she disclosed the incident to her aunt (*Tai*). Accordingly, her aunt further disclosed the same to her father as well as her uncle (*Taya*) and a complaint in this regard was lodged.

4. Learned counsel appearing on behalf of prosecutrix submits that step-mother (co-accused) of the prosecutrix has lodged FIR against prosecutrix and other persons who are witnesses in this case vide FIR No.37/2020 for offences punishable under Sections 498-A/406/34 IPC. Thus, if petitioner is released on bail, he may put pressure upon witnesses and prayed that petitioner may not be granted bail until other witnesses are not examined.

5. Case of petitioner is that present FIR is blatant misuse of process of law and nothing but a counter-blast to the complaint filed by cousin sister of the petitioner namely Shahista. Apart from that, father of complainant namely Mohd. Rizwan wants to put pressure over cousin sister of petitioner

to take divorce from him and also to put pressure over petitioner to take divorce from prosecutrix by forgetting property/flat which is in the name of prosecutrix but in possession of father of petitioner.

6. Learned counsel appearing on behalf of petitioner submits that prosecutrix got married with petitioner on 19.04.2015 and petitioner is the son of Salim Khan, who is real uncle of Shahista i.e. co-accused in the present FIR. Said Shahista, who is cousin sister of petitioner, got married with prosecutrix's father on 2.9.2001. In other words, he had taken divorce from the real mother of the prosecutrix and afterwards, he got married with cousin of petitioner namely Shahista.

7. Learned counsel further submits that real story behind the FIR is that father of petitioner namely Salim Khan executed a Power of Attorney of one flat/floor bearing No.43, Gali No.10, Parwana Road, Khureji, Delhi in favour of prosecutrix at the time of Nikah Nama with petitioner, but possession remains with father of petitioner namely Salim Khan itself. Subsequently, matrimonial disputes started between father of prosecutrix and Shahista. Consequently, father of prosecutrix started putting pressure on petitioner and his father to give possession of said flat and also deposit Rs.3 Lakhs for divorce between prosecutrix and petitioner. Moreover, father of prosecutrix is also willing to take divorce from co-accused Shahista as he is willing to re-marry with some other girl. However, as per new Muslim Act, divorce cannot be obtained without due operation of law. In other words, present FIR in question has been registered with the sole intention to fulfil abovesaid demands.

8. It is further submitted that on 16.6.2019, quarrel and assault between father of prosecutrix and family of petitioner took place due to said torture

and subsequently, a compromise deed was executed between the parties at Police Station Daryaganj, Delhi and father of prosecutrix assured the petitioner's cousin sister namely Shahista not to torture in future. Even after, said incident of 16.6.2019, father of prosecutrix still used to torture Shahista and compel her to leave matrimonial house. On 20.6.2019, Shahista gave a written complaint against father of prosecutrix and other in-laws in CAW Cell at Seemapuri, Delhi. Subsequently, she filed another complaint dated 31.7.2019 on 1.8.2019 to higher police officials.

9. Learned counsel for petitioner further submits that petitioner is the husband of prosecutrix and his Nikah Nama has already been verified by investigating agency and found to be correct. Thus, the present case neither falls within definition of Section 375 IPC nor Section 376-D IPC.

10. Moreover, brother of complainant, namely Abdullaha, has already given a written representation dated 18.8.2019 to the investigating agency as well as to the higher police officials to conduct fair investigation and also to verify property dispute, but investigating agency has neither verified the factum of property dispute nor filed any related documents/statements along with charge-sheet.

11. In view of aforesaid facts and without commenting on merit of prosecution case which is subject matter of trial and petitioner is in judicial custody since 29.7.2019, he deserves bail.

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

13. Petitioner shall not influence witnesses, in any way, failing which State is at liberty to take steps against petitioner as per law.

14. The present petition is, accordingly, allowed and disposed of.
15. Copy of this order be transmitted to the Jail Superintendent and the Trial Court concerned for compliance.
16. Order *dasti* under the signatures of Court Master.

SURESH KUMAR KAIT, J

FEBRUARY 27, 2020/rk