

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

+ **BAIL APPLN. 3061/2019 & Crl. M.B. 2157/2019**

% 20th January, 2020

ASHISH SAHU

..... Petitioner

Through: Mr. Kailash Pandey, Mr. Jyoti
K. Mishra and Mr. Ranjeet
Singh, Advs

versus

STATE

..... Respondent

Through: Ms. Rajni Gupta, APP for the
State with IO/SI Jayesh Kalal &
Insp. Tej Dutt Gaur, PS : Nabi
Karim.

CORAM:

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

RAJNISH BHATNAGAR, J (ORAL)

1. This is a petition under Section 439 of Code of Criminal Procedure, 1973 for seeking regular bail to the petitioner in FIR No. 318/2019, under Section 328/376 IPC registered at Police Station Nabi Karim, Delhi.

2. In brief, the facts of the case are that the victim got a friend request in November 2018 from the petitioner on her face book and she accepted it in January 2019, and eventually started talking with the petitioner. According to the victim she was stressed as her

engagement was broken off. So she had shared everything with the petitioner over the call. Petitioner was of the same caste as that of the victim, so he proposed her for marriage. He came to Delhi on 23.2.2019 to see the victim. The victim and the petitioner then decided to meet in a Hotel to discuss about the marriage. So the petitioner took a room in Hotel Savera located in Nabi Karim. Then, they both went to hotel and after some time the petitioner went down stairs to get something to eat. It is alleged that the petitioner then handed over a cold drink to the victim and after taking cold drink, the victim felt dizzy, unconscious and uneasy and she slept on sofa. When she gained senses, she realized that petitioner developed physical relation with her. On gaining full consciousness the victim quarrelled with the petitioner but he convinced her that he would marry her. So the victim felt that there was no need to fight with the petitioner. Thereafter, they stayed in the same hotel for next two days, and after that he left to Allahabad. It is alleged that again on 27.3.2019, the petitioner came to Delhi to see her and took a Hotel Cooper in Pahar Ganj and they again went there and had physical relationship. Since the petitioner had assured the victim that they were marry and relationships were with her consent. It is alleged that thereafter the petitioner started ignoring the victim and also refused to marry. It is alleged that the petitioner also threatens the victim from filing any complaint against him.

3. It is averred by learned counsel for the petitioner that the allegations are false and frivolous the victim is a lady aged around 34

years and she had made physical relations with the petitioner with her consent. He further submits that the petitioner is in judicial custody since 7.10.2019. It is further submitted that the victim had stayed in the hotel with the petitioner not once but twice and even stated in the FIR that the relations were made with her consent. It is also averred that there is delay of six months in registration of FIR.

4. State has filed the Status Report, and it has been vehemently argued by learned APP for the State that the allegations are grave and serious in nature and charges are yet to be framed and the victim is yet to be examined.

5. No doubt, the victim has made some serious allegation against the petitioner but that is only for the consideration at the time of grant or denial of bail. The totality of circumstances has to be seen before a person is admitted to bail. In the instant case, even if it is assumed that the allegations against the petitioner are correct, it best, it is because of the consent of the complainant having been obtained on the pretext of marriage would be made out. It is also pertinent to note that the FIR has been lodged on 10.9.2019 and the instant complaint is of 27.3.2019, and prior to that the victim/complainant has accompanied the petitioner in two different hotels and has continued to have relationship with the petitioner even after the first alleged incident when according to the victim/complainant the petitioner made physical relations after giving her some intoxicant in the drink.

6. The contention of the prosecution that the consent of the victim/complainant was obtained on the pretext of marriage would be

looked into at the time of trial and no useful purpose would be served in keeping the petitioner in judicial custody.

7. Keeping in view the facts and circumstances of the case, petitioner is admitted to bail on furnishing personal bond for a sum of Rs.50,000/- with one surety in the like amount to the satisfaction of the trial court concerned.

8. The bail application and Crl. M.B No. 2157/2019 stand disposed of.

9. Nothing stated hereinabove shall tantamount to the expression of any opinion on the merits of the case.

RAJNISH BHATNAGAR, J

JANUARY 20, 2020/ib