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

+ **BAIL APPLN. 10/2020**

SACHIN RATHORE @ SACHIN THAKUR Petitioner

Through **Mr.Sunil Kapoor, Adv.**

versus

THE STATE GOVT. OF NCT OF DELHI Respondent

Through **Mr. Hirein Sharma, APP for State.**
W/SI Ekta PS Uttam Nagar.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

ORDER

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07.01.2020

Crl. M.A. 105/2020

Allowed, subject to all just exceptions.

Application is disposed of.

BAIL APPLN. 10/2020

The present petition is filed under section 439 Cr.P.C. for grant of bail in pursuance to FIR No.499/2019 dated 10.08.2019 registered at Police Station Uttam Nagar for the offences punishable under sections 376/506 IPC.

The case of the petitioner is that he got married with Ms.Priyanka on 12.05.2013 and from the said wedlock two female children namely Sidhi was born on 22.10.2015 and Radhi was born on 07.11.2017. As per the case of the prosecution, the prosecutrix is a resident of E-170, Om Vihar, Uttam Nagar, Delhi and was known to the petitioner for the last five years as both

are in the same profession of singing and dancing. In the year 2015, the petitioner gave a marriage proposal to the prosecutrix, after which she introduced the petitioner to her family members. The petitioner said that his parents will not give consent for the marriage being an inter-caste marriage, but gave assurance that he will convince his parents as he is their only son. It is further alleged that the prosecutrix, her parents and the petitioner went to Village Garpura, Bihar where the marriage of prosecutrix was performed with the petitioner in Shiv Temple on 01.07.2017. Thereafter, the petitioner did not go to his parent's house and started living with the prosecutrix at her house at E-170, Om Vihar, Uttam Nagar and established physical relations with her. Further case of the prosecutrix is that on the insistence of prosecutrix, the petitioner called his parents at her house and they informed the prosecutrix that the petitioner is already married and a divorce case is pending between the petitioner and his wife, Ms.Priyanka. Petitioner's wife has come to know about the second marriage of the petitioner, however, they assured that after the divorce they would accept her as their daughter-in-law in front of the society. The prosecutrix also started visiting the house of the petitioner. On seeking permission from the parents of the petitioner, the prosecutrix made a complaint against the wife of the petitioner in the police station. They took Rs. 2.5 lacs for the divorce of the petitioner and to release the mortgaged house. In the year 2018, the prosecutrix also started residing with the petitioner and his parents in a rented house at Dwarka where she got pregnant, however, they got her aborted by giving medicine. Thereafter, the petitioner and his parents started residing at RZ-2, Syed Nangloi, however, they refused to let the prosecutrix live there with them. Thereafter, the petitioner stopped meeting and picking calls of the

prosecutrix and she came to know that the petitioner is residing with his first wife and children. Lastly the prosecutrix and the petitioner developed physical relation on 20.06.2019. She made a complaint to the Police Station Uttam Nagar on 10.08.2019 and on the basis of her complaint, the present FIR was registered against the petitioner and he was arrested by the police on 10.08.2019 itself and since then he is in judicial custody.

Learned counsel further submits that after registration of FIR and arrest of the petitioner, the statement of the prosecutrix was also recorded under section 164 Cr.P.C. on 16.08.2019, whereby she reiterated the complaint based upon FIR has been registered.

Learned counsel further submits that the investigation has already been completed and the charge-sheet has been filed before the learned Metropolitan Magistrate. Presently, the case is pending for trial before learned ASJ, District South West, Dwarka Courts, New Delhi and is fixed for prosecution evidence on 07.01.2020. Further submits that prosecutrix has falsely implicated the petitioner in the present case. The petitioner and prosecutrix were in the same profession i.e. singing and dancing and they used to perform various shows/Drama in Hotel, Club, Pub etc. and were known to each other since 2015 and became good friends. The petitioner and prosecutrix used to travel together for their shows and developed friendly relations and they both used to share their feelings and thoughts and even the petitioner gave her money as a friendly loan. The prosecutrix used to visit the house of the petitioner and even she used to talk with the wife of the petitioner. Thus, the prosecutrix was aware of the fact that petitioner is a married man having two children. Even wife of the petitioner was under the wrong impression that the petitioner is having extra marital relations with

the prosecutrix, however, the prosecutrix herself informed the wife of the petitioner that there is no such relation. Not only this, the prosecutrix even gave a written complaint against the wife of the petitioner in the Police Station Uttam Nagar dated 24.10.2018 wherein she has stated that she has no extra marital affair with the petitioner.

On the other hand, learned APP appearing on behalf of the State has opposed the present petition by submitting that the petitioner is married and the said fact was not initially disclosed and the petitioner had physical intercourse with her by giving assurance that they will live together as husband and wife. Moreover, since the material witnesses are yet to be examined, the petitioner should not be granted bail.

It is not in dispute that since the wife of the petitioner quarrelled with the prosecutrix and levelled false allegations against the prosecutrix and as no action was taken by the Police on her complaint, the prosecutrix even filed a defamation case under section 500/323/506 IPC against the wife of the petitioner in Dwarka Courts, New Delhi and the same was registered as criminal complaint No.2018/2019 and assigned to the court of learned ACMM/South West/Dwarka, the same was dismissed for non-appearance and non-prosecution vide order dated 19.09.2019.

In the complaint, the prosecutrix herself stated that she was having friendly relations with the petitioner because they both were in the same profession of singing and dancing and even stated that the photographs of marriage are as per demand of scene/drama and there is no relationship between the prosecutrix and the petitioner and the wife of the petitioner is making false allegations.

It is also not in dispute that the petitioner is in judicial custody since

10.08.2019.

However, without commenting upon the merits of the case, I am of the view that the present case is fit for bail. Therefore, 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.

Before parting with the order, it is relevant to mention that nothing contained in this order shall be construed as an expression on the merits of the case. The Trial Court shall not get influenced by the observations made by this Court, while passing the final orders in the trial.

The present bail application is allowed and disposed of.

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

Order *dasti* under the signatures of Court Master.

SURESH KUMAR KAIT, J

JANUARY 07, 2020

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