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

+ **BAIL APPLN. 96/2020**

MANOJ KUMAR SAINI

..... Petitioner

Through: **Mr. R.K. Singh, Mr. Kaushal Yadav
and Ms. Akansha Rai, Adv.**

versus

STATE

..... Respondent

Through: **Mr. Panna Lal Sharma, APP for State
with SI Jyoti, PS – Mandir Marg**

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

ORDER

16.01.2020

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CRL. M.A. 806/2020

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

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3. The present application is filed under Section 439 Cr.P.C. seeking grant of bail in case FIR No. 68/2019 dated 02.07.2019 registered at Police Station – Mandir Marg for the offences punishable under Sections 376/506 IPC and Section 6 POCSO Act.
4. Notice.
5. Learned APP accepts notice on behalf of the State.
6. Brief facts of the case as presented in the present petition are that on

27.08.2017, an agreement was entered into between the applicant/petitioner and complainant, whereby they agreed to cease all their relationships due to the temperamental differences between them. It was also stated in the said agreement that the parties shall be free to lead their independent lives without any kind of interference from each other.

7. However, on 02.07.2019, the complainant got registered an FIR for the offences punishable under Sections 376/506 of IPC and Section 6 of POCSO Act, 2002 at P.S. Mandir Marg, alleging that the complainant came in contact with the petitioner in the year 2015, when she was in search of a job, thereafter, petitioner on the promise of providing her a job, raped her on different dates in the month of September, 2015. The complainant was also gifted one Honda Activa by the petitioner. Later on the petitioner also met her mother and promised to marry the complainant. In December 2015, complainant was sent to Goa, by the petitioner where complainant got to know about 2 friends of the petitioner, who were consuming drugs and alcohol. In the year 2016, the complainant was called to a flat in Vaishali, Ghaziabad under the threat of some videos and photographs and there, the petitioner committed rape on her by drugging her. It is further alleged in FIR that in the same year, petitioner became friendly with one of the friends of the complainant and later on, the petitioner had performed a marriage with her said friend.

8. Learned counsel for petitioner submits that there is a delay of around 4 years in lodging the said FIR from the alleged date of offence and there is no explanation for the same. *Prima facie*, it appears that the FIR in question has been registered with ulterior motives and to extract money from the

petitioner. On 06.07.2019, the applicant/petitioner filed an application under Section 438 Cr.P.C. for anticipatory bail before the learned District and Sessions Judge, therein on 23.07.2019, status report was also filed by the IO stating that the documents attached with the bail application were verified and found to be correct.

9. On 31.07.2019, learned Court dismissed the said application of the petitioner inspite of the admitted position on record that the petitioner and complainant were in a relationship because the petitioner was in possession of some photos/videos of the complainant. On 23.08.2019, the petitioner surrendered at 2:45 PM in Patiala House Court, New Delhi, and was taken into custody and since then, he is in judicial custody.

10. It is further submitted that on 29.08.2019, the complainant in her statement recorded under Section 161 Cr.P.C has clearly stated that "*the accused never showed me any of my obscene photograph or video*", whereas she claims that he has her pornographic photos and videos, thereby contradicting her own statements.

11. On the other hand, learned APP for State has opposed the present petition and submits that the petitioner, on assurance of marriage to the complainant, had maintained physical relations with her and thus, the case falls under Section 376 IPC. Since, the case is pending before the learned trial Court and the material witnesses are yet to be examined, therefore, the present application may be dismissed.

12. Fact remains that the petitioner and prosecutrix have entered into an agreement executed on 27.08.2017, whereby it is stated that they had

relations with consent and they have settled all their disputes and are willing to live their life independently without interference from each other. However, coming in contact with one Asif, the prosecutrix made complaint with an ulterior motive. In addition to above, there are photographs of the prosecutrix with other friends, wherein she is enjoying *hukka* and attending parties. However, without commenting upon the case of the prosecution, I am of the opinion that the present case is fit for granting bail as the trial shall take substantial time and the petitioner is in judicial custody since 23.08.2019.

13. Accordingly, the applicant shall be released on bail on his furnishing personal bond in the sum of ₹20,000/- with one surety of the like amount to the satisfaction of the learned trial Court.

14. The application is allowed and disposed of.

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

16. The Trial Court shall not get influenced by the observations made in this order.

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

SURESH KUMAR KAIT, J

JANUARY 16, 2020

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