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

% **Date of Decision: 24.01.2020**

+ **BAIL APPLN. 189/2020 & CRLM.A. 1589/2020**

SANDEEP SINGH KADYAN Petitioner

Through: Mr. S.K.Saxena, Mr.
Yogender Kumar, Ms S.
Kadayan and Mr. Kapil
Chandra, Advocates.

Versus

STATE OF NCT OF DELHI Respondent

Through: Mr. G.M.Garooqui,
APP for State with SI
Saroj Singh PS: Dwarka
North.

CORAM:
HON'BLE MR. JUSTICE BRIJESH SETHI
J U D G M E N T

BRIJESH SETHI, J (ORAL)

1. Vide this order, I shall dispose of an anticipatory bail application filed under section 438 Cr.P.C. on behalf of the petitioner **Sandeep Singh Kadyan** in FIR No. 0359/2019 u/s. 498A/377/506/34 IPC, PS Dwarka North.

2. Ld. Counsel for the petitioner has prayed for anticipatory bail on the ground that petitioner is innocent and has been falsely

implicated. It is submitted that petitioner is the husband of the complainant and their marriage was solemnized on 12/05/2013. It is further submitted that complainant is working as constable in Crime Branch and has filed multiple complainants against the petitioner and his family members but in none of the complaints which were filed earlier there is mentioning of the allegations as mentioned in the present FIR. It is further submitted that the alleged incidents with respect to Section 377 IPC had taken for the first time in June 2018 but during this period the petitioner was not medically fit even to walk and therefore, it was not possible for the petitioner to perform such an act in such a poor health. It is further submitted that all the allegations as levelled by the complainant in the present FIR are false and baseless and the FIR lodged by the Complainant is concocted and false and an abuse of the process of law. It is further submitted that there is an apprehension that police may arrest the petitioner in present FIR bearing no. 359/2019 and, therefore, it is prayed that in the event of arrest, he be released on anticipatory bail.

3. Ld. Counsel for the petitioner, in support of its submissions, has relied upon '**Kuldeep Kapoor & Anr v. State, NCT of Delhi**',

Bail Appl No. 584/2017 decided on 19.07.2018. I have gone through the order on the bail application. However, the same is distinguishable on the basis of the facts and circumstances stated therein.

4. The anticipatory bail application is opposed by the Ld. APP for the State on the ground that the allegations against the petitioner are serious in nature. Petitioner has forcefully performed unnatural sex with his wife and also physically assaulted her. He has, therefore prayed for dismissal of the anticipatory bail application.

5. I have considered the rival submissions. The present case FIR No. 359/19 u/s. 498A/377/34 IPC, PS Dwarka North, New Delhi was registered on 06.09.2019 on the complaint of complainant made before the Assistant commissioner of Police, CAW Cell, Dwarka District, New Delhi wherein she has alleged that her parents solemnized her marriage as per Hindu rituals on 12-05-2013. It was her second marriage with consent of both families. Soon after her marriage, her husband and his family members started physically and mentally harassing her and taunted her by many ways saying that she was not a suitable lady for their family. On February, 2014

complainant had given birth to a male child out of this wedlock. Complainant alleged that at the time of *kuan puja*, her mother -in law demanded more things from her parents. Petitioner was having relation with a foreigner lady namely Delphine Jade Marie and due to this reason, he did not behave properly with complainant. When she objected to such relationship, petitioner threatened her for divorce. Petitioner had performed forcibly unnatural sex with her. On 15.12.2018, petitioner assaulted the complainant physically. During course of investigation, statements U/S 161 Cr.PC. of the complainant and her relatives were recorded. Statement of complainant u/s 164 Cr.PC was also recorded before Ld. MM, Ms. Udit Jain in which she has reiterated her previous version. During the course of investigation, complainant has filed an application that petitioner is threatening her and, therefore, section 506 was also added in present case.

6. Ld. Counsel for the petitioner has argued that in the earlier FIR bearing no. 226/2018 dated 07.09.2018 filed by the complainant under Section 420/467/468/471/494/120B IPC PS Crime Branch, allegations of unnatural sexual intercourse or dowry harassment

have not been mentioned and this clearly shows that the present FIR has been lodged just to harass the petitioner. However, the court is of the view that the FIR bearing no. 226/2018 was registered on the ground that petitioner ran away with one Delphine Jade Maria and married her whereas the present FIR has been registered for harassment as well as performing unnatural sexual intercourse by the petitioner. Even if these facts were not mentioned in the earlier complaint by the complainant because of the fear of getting socially defamed and also because of the fact that she was being constantly threatened that she would be killed if she would not withdraw her case, it does not mean that her version should not be believed. Non-mentioning of certain facts in the earlier FIR does not dilute the offences alleged in the present FIR. The petitioner's defence that he was not well and incapable of performing alleged offence under Section 377 IPC cannot be considered at this stage when the investigation is at a very initial stage.

7. In view of the above facts appearing on record and keeping in view the allegations levelled against the petitioner that he has committed unnatural sexual intercourse with the complainant and

also physically assaulted her, no grounds for anticipatory bail are made out. The anticipatory bail application is, therefore, dismissed and stands disposed of accordingly.

BRIJESH SETHI, J

JANUARY 24, 2020

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