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

+ **BAIL APPLN. 270/2020**

VIKRAM

..... Applicant

Through: Mr.Sachin Bansal & Ms.Arti Sharma,
Advocates.

Versus

STATE

.....Respondent

Through: Mr.Ashok Kumar Garg, APP for State
with SI Reena.

HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER
08.09.2020

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(hearing through Video Conferencing)

The applicant, vide the present application seeks the grant of anticipatory bail in relation to FIR No.279/2019, PS Nangloi District West under Sections 376D/506/34 of the Indian Penal Code, 1860 submitting to the effect that he has been falsely implicated in the instant case. It has further been submitted on behalf of the applicant that the co-accused in the instant case namely Chand Mohammad has already been acquitted; that the statement made by the prosecutrix before the learned Trial Court is filled with material contradictions from what was stated in the FIR and what was stated in the statement under Section 164 of the Cr.P.C., 1973.

It has further been submitted on behalf of the applicant that the applicant has been pursuing his matter repeatedly by moving applications

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through the SHO concerned, by moving before the Trial Court concerned and by also moving the bail application before this Court and that thus, there is no scope of the applicant having been absconding. It has been submitted further that the transcript of the conversations between the applicant and the prosecutrix of which a CD was provided by the applicant also to the Investigating Agency speaks categorically to the effect that the prosecutrix was willing to have sexual relations with the applicant for money. It has thus been submitted on behalf of the applicant that even if the statement made by the prosecutrix is presumed to be true, the relations, if any, between the applicant and the prosecutrix could only have been consensual.

During the course of the submissions that have been made on behalf of the applicant, a further submission was made that through the MLC of the prosecutrix, there was nothing to indicate any injury and furthermore, the prosecutrix had given a history of menstruating one day before and thus, the contention raised by the prosecutrix was not believable.

It is submitted by the learned counsel for the applicant that the copy of the CD was supplied three times and can be supplied again.

On behalf of the State, the application is vehemently opposed submitting *inter alia* to the effect that the applicant had been absconding and has since been declared a proclaimed offender on 22.02.2020 and thus, there is no merit in the prayer made by the applicant and that the applicant's application ought not to be considered. It has further been submitted on behalf of the State that the CD that has been provided by the applicant is also blank and that there is nothing that in the same.

Without any observations on the merits or demerits of the trial that may take place, on a consideration of the submissions that have been made on behalf of either side and on a perusal of the stated transcript

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which is placed on the record as Annexure-A8 between the applicant and the prosecutrix purportedly, it is indicated as also observed vide order dated 23.12.2019 by the learned Link ASJ (Special Fast Track Court)-01, West Tis Hazari Courts, Delhi at the time of consideration of the Bail Application No.4669 that even the transcript of the stated telephonic conversation of the prosecutrix with the applicant, made it apparent that there were sexual favours being demanded by the applicant in return of money.

The statement under Section 164 of the Cr.P.C., 1973 of the prosecutrix dated 10.06.2019 states to the effect that the wife of the co-accused Chand Mohammad who has already been acquitted, had told her that she would give a lakh of rupees if she only got the present applicant arrested and changed her testimony qua the co-accused i.e. Chand Mohammad. The said statement also categorically states to the effect that the prosecutrix was sexually assaulted by both the applicant and by Chand Mohammad and was also threatened with dire consequences and not to tell anyone of the same and she has further stated that through her statement that she has a small child. The statement under Section 164 of the Cr.P.C., 1973 of the prosecutrix also categorically states to the effect that she was in need of money as her husband was in jail and she needed to deposit money for some committee.

The statement of the prosecutrix recorded dated 18.11.2019 before the learned Trial Court states therein to the effect that the relations between her and the co-accused Chand Mohammad were wholly consensual and that she had sexual relations with Chand Mohammad even earlier and that she and Chand Mohammad had been on friendly terms.

It is essential to observe that the statement under Section 164 of the Cr.P.C., 1973 of the prosecutrix was shown to her when her statement

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recorded on 18.11.2019 before the learned Trial Court and she identified her signatures thereon, however she has sadly not been confronted with the aspect that in her statement under Section 164 of the Cr.P.C. she stated that she was asked by the wife of Chand Mohammad to change her statement so that she was given a lakh of rupees as well as the aspect that the prosecutrix had stated in her statement under Section 164 of the Cr.P.C., 1973 that she needed money. Even the copy of the transcript that the applicant has placed on record as Annexure A-8 categorically indicates as has already been observed elsewhere hereinabove that there was a demand for sex made by the applicant in return of money.

Taking into account all the abovesaid aspects, presently, without the prosecutrix being examined and cross-examined in the Court on oath, it cannot be presumed that there were any consensual relations between the applicant and the prosecutrix.

Furthermore, taking into account the aspect that the applicant has not joined the proceedings, though, it is submitted on behalf of the applicant that the copy of the CD was supplied three times to the IO, taking into account the gravity of the allegations of the offences levelled against the applicant as well as the aspect that the prosecutrix appears to be under pressure, there is no ground whatsoever for the grant of bail to the applicant.

The application is thus, declined.

ANU MALHOTRA, J

SEPTEMBER 08, 2020

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