

\$~1

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

% **Date of Decision: 04.03.2020**

+ **BAIL APPLN. 509/2020**

SUBHASH CHANDER Petitioner

Through: Mr. Akshay Chandra and Mr.
Ishwar Singh, Advocates.

Versus

STATE (GOVT OF NCT DELHI) Respondent

Through: Mr. Raghuvinder Verma,
APP for State with SI Renu
PS: Wazirabad.

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 **Subhash Chander** in FIR No. 46/2020 u/s. 376 IPC, PS Wazirabad.

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 and complainant were in a

live in relationship since 2014 and everything was consensual between them. The present FIR has been registered out of some misunderstanding or misconception of facts. It is submitted that complainant has compromised with the petitioner and she does not want any legal action on her FIR. The petitioner has already ready joined the investigation and in these circumstances, 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 Rajwant Singh @ Rinku vs. State, Bail Appl. No. 327/2016. However, the same is distinguishable on the basis of the facts and circumstances stated therein. Moreover, no straitjacket formula can be laid down while deciding bail application. Each case has its own peculiar facts and circumstances.

4. The anticipatory bail application is opposed by the Ld. APP for the State on the ground that the allegations levelled against the petitioner are serious in nature. Petitioner has made physical relations with the prosecutrix without her consent and also took objectionable photographs. Petitioner is absconding and NBWs have been issued against him. He has, therefore prayed for

dismissal of the anticipatory bail application.

5. I have considered the rival submissions. The present case FIR No. 46/2020 u/s. 376 IPC, PS Wazirabad, New Delhi was registered on 05.02.2020 on the statement of complainant/prosecutrix. She has alleged that in the year 2014, she met petitioner regarding job in his company namely 'Dream Your Child Private Limited' as Donor Co-ordinator. In the month of September 2014, petitioner had taken her to Gurgaon Surrogate home where he made physical relations with her in drunken condition and also took her obscene photographs and threatened that if she would disclose this incident to anyone, he would circulate all these photographs. Thereafter, on the pretext of these photographs, petitioner again made physical relations with the prosecutrix against her consent number of times by taking her to different places. Due to the above act of the petitioner, prosecutrix became pregnant but got aborted two times and at present she is again carrying 7 months pregnancy. During the course of investigation, statement of prosecutrix under Section 164 Cr.P.C. was recorded wherein she has supported her version given in the complaint. During further investigation, it is revealed that the

petitioner was already married having one son and two daughters. Search of the petitioner was made but he is absconding and therefore, NBWs were issued against him. Custodial interrogation of the petitioner is necessary as the alleged mobile phone and forged I-Card of the prosecutrix are yet to be recovered.

6. Thus, the allegations levelled against the petitioner are serious in nature. There are, prima facie clear and categorical allegations of sexual intercourse with the prosecutrix against her consent. There are also allegations that petitioner took objectionable photographs of the prosecutrix and threatened her that if she discloses this incident to anyone, the photographs will be circulated and on this ground, petitioner had taken the prosecutrix to Gurgaon, Udaipur and Agra and again made physical relations with her against her consent. Though, it is submitted by Ld. Counsel for the petitioner that prosecutrix has filed the case under misconception and misunderstanding, however, keeping in view the nature of allegations that the petitioner has made sexual relations with the victim against her consent, the threat extended by the petitioner to the prosecutrix and his conduct of taking objectionable photographs

and further keeping in mind the fact that offence under Section 376 IPC cannot be compounded or settled as it is an offence not only against the victim but also against the society at large, no grounds for anticipatory bail are made out. The anticipatory bail application is, therefore, dismissed and stands disposed of accordingly.

BRIJESH SETHI, J

MARCH 04, 2020

Ak