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

+ BAIL APPL. 1375/2020

BABLU @ BABLOO

..... Applicant

Through: Mr. Anil Kumar Sheoran, Advocate.

versus

THE STATE (NCT OF DELHI)

.... Respondent

Through: Mr. Tarang Srivastava, Advocate.

Mr. D. Hasija, Advocate for the complainant.

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

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14.07.2020

The applicant, who is an undertrial in case FIR No.292/2017 registered under sections 323/341/354/354C/376/506/174A IPC at PS: Vasant Kunj (South), seeks regular bail.

2. Status report dated 13.07.2020 has been filed in the matter. Nominal roll dated 10.07.2020 has also been received from the Jail Superintendent.

3. Pursuant to last order dated 23.06.2020, in compliance of section 439(1-A) Cr.P.C. read with Delhi High Court Practice Directions dated 24.09.2019, a notice was served intimating to the complainant/prosecutrix that her presence is required at the time of hearing the bail application. Mr. D. Hasija, learned counsel for the complainant has joined the video-conference hearing alongwith the complainant/prosecutrix who is present in counsel's office.

4. Mr. Anil Kumar Sheoran, learned counsel for the applicant submits that the genesis of the matter is a long-standing consensual, intimate relationship of about 08 years between the complainant and the applicant's nephew Sanjay. Counsel submits that the complainant lady is aged about 40 years, and is married with 4 children. The complainant is stated to have shared an intimate relationship with Sanjay, from which a male child is also alleged to have been born on 07.09.2013. Sanjay is stated to be the main accused in the present case.

5. Mr. Sheoran contends that as his uncle, the applicant had consistently dissuaded Sanjay from having a relationship with the complainant; however, to no avail. It is further submitted that disputes arose between the complainant and Sanjay, when Sanjay planned to get married. In support of these contentions, counsel has relied upon a purported compromise deed (*samjhautanama*) dated 09.06.2017 which recites to above effect. The compromise deed also records that, as part of the compromise between the Sanjay and the complainant, Sanjay would never get married to any other person and the complainant would seek divorce from her husband, whereafter the complainant and Sanjay would get married.

6. Without engaging any further with the factual allegations and counter-allegations, Mr. Sheoran submits that matters got precipitated when Sanjay got married to a third person on 18.06.2017, soon whereafter the complainant got FIR dated 01.07.2017 registered. Counsel submits that charge-sheet was filed against Sanjay on 01.09.2018, whereafter the complainant's deposition has been recorded; and the complainant has been discharged. It is pointed-out

that there is no allegation, either in the FIR or in the chargesheet, that the applicant committed an offence under section 376 IPC against the complainant.

7. Attention is also drawn to order dated 29.04.2019 whereby the learned ASJ has been pleased to grant regular bail to the main accused Sanjay. However, it is submitted, that by order dated 05.06.2020 the applicant's bail application has been rejected.

8. On the other hand, counsel for the complainant submits, that while it is correct that there is no allegation that the applicant committed any offence under section 376 IPC against the complainant, a reading of the charge-sheet will show that the other offences, including those under sections 323/341/354C/506 IPC have been alleged against the applicant, which are grave and serious offences. Moreover, it is submitted, that the applicant absconded and was declared Proclaimed Offender on 16.07.2018 and remained so for almost 02 years, till he was arrested on 27.02.2020 in some other case under section 41 Cr.P.C., and was subsequently formally arrested in the present case on 06.03.2020. It is contended that the applicant is also facing proceedings under section 174-A IPC, in view of which he does not deserve the indulgence of bail.

9. Mr. Tarang Srivastava, learned APP also opposes grant of bail, principally on the basis that unlike the main accused Sanjay, the applicant had absconded, for which reason he should not be enlarged on bail. Mr. Srivastava also draws attention to the complainant's statement recorded under section 164 Cr.P.C. where she makes a specific allegation in relation to an incident of 20.05.2017, where she alleges that the applicant made a video of her and Sanjay. It is noticed

however, that the incident of 20.05.2017 has been attributed to both the main accused Sanjay as well as the applicant.

10. Nominal roll shows that applicant has been in judicial custody as an undertrial for more than 04 months; that his jail conduct has been satisfactory; and that the applicant has no involvement in any other criminal case.

11. Upon a conspectus of the facts and circumstances, what prevails with this court is the following :

- (i) *firstly*, the essential allegations in the FIR and the charge-sheet arise from an alleged relationship between the complainant and accused Sanjay;
- (ii) *secondly*, there is no allegation that the applicant committed an offence under section 376 IPC; nor is there any allegation of an offence under section 376D IPC;
- (iii) *thirdly*, though not dispositive of the matter in any way, the applicant has placed on record a purported compromise deed, which bears the signatures as well as the photograph of the complainant, where the narration suggest a long-standing intimacy and relationship between the complainant and Sanjay, if nothing else;
- (iv) *fourthly*, the main accused Sanjay has been enlarged on regular bail by order dated 29.04.2019 made by the learned Sessions Court, after having spent about 06 months in judicial custody; and
- (v) *lastly*, though it is correct that the complainant's deposition has not yet been recorded in the proceedings arising from the subsequent charge-sheet filed against the applicant, considering

the restricted functioning of courts due to the prevailing pandemic, it is unlikely that the deposition would be recorded anytime soon. This court has been informed that the next date of hearing in the matter is 22.08.2020, but trial in the matter is unlikely to be completed anytime soon.

12. As recorded above, the applicant has already spent about 04 months in judicial custody as an undertrial; and insofar as his alleged abscondence is concerned, the applicant will face proceedings under section 174-A IPC.

13. Be that as it may, considering the fact that the main accused Sanjay has already been enlarged on bail more than a year ago; that charge sheet has been filed against the applicant; and there is no allegation of intimidation of witnesses or tampering with evidence by the applicant while he was at large, this court is persuaded to grant to the applicant *regular bail*, upon the following conditions:

- a. The applicant shall furnish a personal bond in the sum of Rs.30,000/- with 01 surety in the like amount by a family member, to the satisfaction of the Duty Magistrate;
- b. The applicant shall furnish to the Investigating Officer/ SHO, PS: Vasant Kunj (South) a cellphone number on which the applicant may be contacted at any time and shall ensure that the number is kept active and switched-on at all times ;
- c. The applicant shall not contact nor visit nor offer any inducement, threat or promise to the first informant/ complainant or any of the prosecution witnesses. The applicant shall not tamper with evidence nor otherwise

indulge in any act or omission that is unlawful or that would prejudice the proceedings in the matter;

- d. The applicant shall intimate to the Investigating Officer/ SHO any change in his residential address from that appearing in the prison records.

14. Nothing in this order shall be construed as an expression on the merits of the pending matter.

15. Application stands disposed of.

16. Other pending applications, if any, also stand disposed of.

17. A copy of the order be sent to the Jail Superintendent.

ANUP JAIRAM BHAMBHANI, J.

JULY 14, 2020

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