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

+ **BAIL APPLN. 1800/2020 & CRL. M.A. 9552/2020**

SUNIL

..... Petitioner

Through: Mr Vineet Jain and Mr Avinash
Mohapatra, Advocates.

versus

STATE

..... Respondent

Through: Mr Ravi Nayak, APP for State with
ASI Jaspreet Pannu, PS Patel Nagar.
Mr Rahul Bhagat, Advocate for
complainant.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

21.09.2020

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[Hearing held through video conferencing]

1. The petitioner has filed the present petition, *inter alia*, praying that the petitioner be granted bail in connection with FIR No.0199/2020 under Sections 323/376/506/354/354(c) registered with PS Patel Nagar.
2. The said FIR was registered at the instance of the prosecutrix (name withheld). The status report indicates that a PCR call was received at PS Patel Nagar on 30.04.2020 and the matter was marked to SI Satbir. However, on that date, the prosecutrix did not make any statement. On the next day, the prosecutrix along with her husband came to the police station.
3. The prosecutrix alleged that around six years ago, her husband had

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taken a water pipeline from the petitioner and thereafter, he started visiting their house. She alleged that one day, when she was alone, the petitioner came into her home; he forcibly pressed her breast and, thereafter, sexually molested her. He did so on several occasions. She also stated that on one day, when she was alone in the house, the petitioner had entered the house and had threatened her that he would kill her husband if she did not establish physical relations with him. She alleged that, thereafter, he raped her. She stated that, thereafter, the petitioner used to threaten her and had call her to his residence where he would forcibly established physical relations with her.

4. She alleged that the petitioner had been using abusive language against her since the past two years and also demanded ₹90,000/- from her. She stated that she had narrated the incident to her husband about two years prior to making the complaint. However, he did not make any complaint as he feared the petitioner.

5. She further alleged that on 30.04.2020, the petitioner had come to her street and had abused and threatened her while standing outside her home. Her husband had gone down stairs and accosted him but the petitioner had started a scuffle, and thereafter, a PCR call was made.

6. The prosecutrix's statement under Section 164 of the Cr.PC was recorded and it appears that she has further improved her allegations. The said statement is not on record but has been shared on the video screen by the learned APP. In her statement, she had stated that she had a daughter and the petitioner used to threaten that he would molest her.

7. It is contended on behalf of the petitioner that the petitioner and the

prosecutrix had consensual relation and the same was also known to her husband. It was also contended on behalf of the petitioner that he has a video footage, which would establish that the relationship between the prosecutrix and the petitioner was consensual. The petitioner conceded that the video clippings were made of their intimate relationship. However, he stated that the said video recordings were made with full knowledge and consent of the prosecutrix and also at her instance.

8. The learned counsel appearing for the petitioner submitted that the petitioner had preserved the video clippings and audio recording that would establish that the relationship between the petitioner and the prosecutrix was consensual.

9. In view of the aforesaid statement, this Court had by an order dated 01.09.2020 directed the petitioner to furnish to the concerned IO the video clippings in which the same was recorded. The petitioner was also directed to make one additional copy of the video clippings and the audio recordings and provide the same to the IO. The device and one copy of the video clippings and audio recordings were directed to be sent to FSL for verification and the IO was directed to conduct further investigation and submit a status report clearly indicating whether it appeared that the video clippings were made with the consent of the prosecutrix and whether the same supported the contention advanced by the petitioner.

10. Pursuant to the orders passed on 01.09.2020, an additional status report was filed. The said status report indicates that that the petitioner had handed over two Sandisk pen drives (16 GB each) and a golden colour Samsung mobile phone containing sixteen video clippings (pertaining to the

intimate relationship between the petitioner and the prosecutrix). In addition, the same also contained eleven audio recordings. The phone as well as the Sandisk pen drive was seized as per the seizure memo and the same was sent to FSL.

11. The contents of the said pen drive were examined by the concerned IO. She has reported that it appears that the petitioner was aware of the video being recorded and that the physical relationship established between the petitioner and the prosecutrix were consensual and was not forced. The video recording reportedly indicates that the prosecutrix had not expressed any displeasure or any resistance but she was also seen giving some instructions with regard to recording of the videos. The audio clippings also contained recordings, which indicate that the prosecutrix has acknowledged that she owes money to the petitioner.

12. Since the said video clippings had not been shared with the prosecutrix, this Court had by an order dated 18.09.2020 directed the IO to also permit the prosecutrix to view the same in her presence.

13. Mr Bhagat, learned counsel appearing for the complainant states that she has viewed all the sixteen video clippings as well as audio recordings. However, IO, who has also joined the proceedings states that the prosecutrix had only viewed two video clippings and did not wish to view the remaining as she stated that she was aware of them.

14. It is not disputed that the said video clippings do not reflect that the petitioner had established physical relationship forcibly.

15. Considering the above, this Court is of the view that it would be apposite to accede to the prayer made in the present petition. The petitioner

is directed to be released on bail on his furnishing a Personal Bond in the sum of ₹25,000/- with one surety of an equivalent amount to the satisfaction of the Jail Superintendent/Duty Magistrate/concerned court. This is also subject to the following further conditions:-

- a) the petitioner shall provide a contact number to the concerned IO and ensure that he is reachable on it at all times;
- b) the petitioner shall not contact the complainant or her family members either directly or indirectly;
- c) the petitioner shall not visit the residential colony where the prosecutrix reside (Baljeet Nagar). He shall make arrangements to reside in another locality and inform the IO regarding about his address;
- d) the petitioner shall not leave the National Capital Territory of Delhi without prior intimation to the concerned IO; and
- e) he shall ensure that he is present at all proceedings emanating from the FIR in question.

16. The petition is allowed in the aforesaid terms.

VIBHU BAKHRU, J

SEPTEMBER 21, 2020
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