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

+ **BAIL APPLN. 2208/2020**

GAGAN RATHORE

..... Petitioner

Through: Mr Vikram Singh Panwar and Mr
Manu Minocha, Advocates.

versus

STATE

..... Respondent

Through: Mr Ravi Nayak, APP for State with
SI Usha, PS Bindapur.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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17.08.2020

[Hearing held through video conferencing]

CRL.M.A. 11063/2020

1. Allowed, subject to all just exceptions.

BAIL APPLN. 2208/2020

2. The petitioner has filed the present petition seeking anticipatory bail in connection with FIR No. 0713/2020 under Sections 376/328/506 of the IPC registered with PS Bindapur on 07.07.2020.

3. The said FIR was registered on the basis of a complaint made by Ms 'M' (name withheld). She is a young woman aged twenty-five years. It is stated that she is married and has two children. She stated that she had been assisting an elderly lady in Ashok Vihar and her duty hours are from 8:00 PM to 8:00 AM. She stated that on one evening (she did not remember the

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exact date), she met the petitioner and asked him for a lift as she did not have any means of conveyance. She stated that the petitioner dropped her to the house of the elderly lady where she worked. She further stated that they exchanged their phone numbers. They started talking to each other and over a period of time became good friends.

4. Ms 'M' had done her schooling till eight standard. She claims that the petitioner lured her by telling her that he could arrange a tenth pass certificate for her. She alleged that on 16.06.2020, the petitioner called her and asked her to come to Kashmiri Gate Metro Station at 4:00 PM so that he could arrange a tenth class matriculation certificate for her. She reached Kashmiri Gate Metro Station and met the accused, he made her sit in an auto and brought her to JPS Green Hotel near Dwarka Mor Metro Station. According to her, the petitioner made her consume a cold drink, which was spiked with some intoxicants. She alleges that, in the hotel, he established physical relations with her against her wishes while she was in an intoxicated state. He kept her in the said hotel the entire night of 16.06.2020 till the morning of 17.06.2020. She alleges that during this period, he forcibly established physical relations with her several times. She stated that she had become good friends with the petitioner and she had accompanied the petitioner as she trusted him. She stated that on inquiring from him as to why he had established physical relations with her, he had stated that he would take care of her and her children. Thereafter, he had taken her from Dwarka Mor to Inderlok in an auto and she went home from the said spot.

5. Ms M's statement was recorded under Section 164 of the Cr.P.C and she reiterated her allegations.

6. The preliminary investigations revealed that the petitioner and the complainant had voluntarily checked into the hotel. They remained there entire night and had checked out the next morning.

7. The learned counsel appearing for the petitioner contends that the allegation the complainant had come to the hotel for the purpose securing her tenth pass certificate is, *ex facie*, unbelievable because not only did she accompany the petitioner to the hotel but had even checked into the room for the night along with the petitioner. She had made an entry in the register and the same has been verified. He contended that if Ms 'M' had been forcibly raped, she would have reported the incident immediately. He also states that there is no evidence or material whatsoever to suggest that the petitioner had purchased any intoxicant or had carried it to the hotel for administering the same to Ms 'M'. It is submitted that the petitioner and the complainant became good friends and she had voluntarily accompanied the petitioner and checked into the hotel to spend the night together. It is contended that their relationship was entirely consensual. She had remained there for the whole night and the same has been verified. He also states that there is considerable delay in registration of the FIR as the alleged incident is that of 16.06.2020 but the FIR has been registered on 07.07.2020.

8. The status report also indicates that it is Ms M's statement that the petitioner had assured that he would take care of her and her children. According to the petitioner, this also indicates that their relationship was consensual and there can be no allegation of the petitioner forcibly establishing physical relationship with the complainant.

9. Ms 'M' also joined the present proceedings along with the IO. She

has opposed the grant of anticipatory bail. She claims that she had also received a threatening telephone call from the petitioner.

10. According to the petitioner, Ms 'M' has lodged the FIR only to extort fund from him.

11. Considering that Ms 'M' had voluntarily accompanied the petitioner and had checked into the hotel for the night. And, further considering that the FIR has been lodged after a considerable delay, this Court considers it apposite to allow the present petition.

12. The petitioner is granted anticipatory bail on his furnishing a personal bond in the sum of ₹25,000/- with one surety of the equivalent amount to the satisfaction of the concerned IO. This is also subject to the following further conditions:-

- a) the petitioner shall join the investigation and ensure that he is available for all inquiries;
- b) the petitioner shall fully cooperate with the investigation;
- c) the petitioner shall not contact Ms 'M' or anyone of her family members either directly or indirectly;
- d) the petitioner shall provide a contact number and ensure that he is reachable on it at all times; and
- e) the petitioner shall not leave the National Capital Territory of Delhi without intimation to the concerned IO.

13. It is clarified that the present order shall continue till charge(s), if any, are framed by the concerned court.

14. In the event the petitioner does not cooperate with the investigation or comply with any of the conditions as stated above, the parties are at liberty to file an application for cancelation of the anticipatory bail granted to him.

15. The petition is allowed in the aforesaid terms.

16. It is clarified that all proceedings against the petitioner shall continue uninfluenced by any of the observations made herein.

VIBHU BAKHRU, J

AUGUST 17, 2020
MK

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