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

+ BAIL APPLN. 2226/2020

ARUN RANA (IN JUDICIAL CUSTODY) Petitioner

Through Mr.Aniruddh Joshi, Adv.

versus

STATE (GOVT. OF NCT OF DELHI) Respondent

Through Mr.Panna Lal Sharma, APP for the
State.

Ms.Inderjeet Sidhu, Adv. for
complainant.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

ORDER

% **28.08.2020**

The hearing has been conducted through video conferencing.

1. Present petition has been filed under section 439 read with section 482 Cr.P.C. for grant of regular bail to the petitioner in pursuance to FIR No.308/2020 registered at Police Station Narela Industrial Area, Dist. Outer North Delhi for the offence punishable under section 376 IPC.
2. Learned APP has opposed the present petition by stating that prosecutrix is pregnant with petitioner's child and delivery is due in the month of November 2020, thereafter DNA shall be conducted.
3. Status report is silent upon the divorce of the prosecutrix, however, she stated in her complaint on the basis of which present FIR was lodged on 20.06.2020 that she was divorced 3 back before Panchayat but she has no document of divorce and out of that wedlock, she has three children.

4. Ms.Inderjeet Sidhu, learned counsel for prosecutrix/complainant submits that prosecutrix is a Muslim lady. She had been divorced orally by her husband before the Panchayat without any written document 3 years ago. She knows petitioner from past 9-10 years and thereafter he started meeting the prosecutrix, expressed his love for her and lured her on the assurance that he would marry her and repeatedly established physical relations with her, however, after she conceived with the child, he bluntly refused to marry her.

5. Prosecutrix has alleged against the petitioner that he had raped her 4 months ago in her home forcefully, for which no complaint has been lodged previously. Learned counsel for the petitioner submits that it is beyond any stretch of imagination that the incident as alleged to have occurred at around 9 pm inside her hut/Jhuggi of 8x10 feet approx. and the same is attached to other huts bearing a common partition wall. If the complainant had made any hue and cry, it would have attracted large number of people from the locality. Further, the first information reported, as already indicated was lodged after a period of 4 months of the alleged incident.

6. Learned counsel further submits that the question to be considered in this case is whether the accused had actually wanted to marry the victim or had mala fide motives and had made a false promise to that effect only to satisfy his lust is the matter of trial. It is difficult to accept at this stage that a false promise was given to engage her in a sexual relationship and that it was under such misconception of fact that she had acceded to the wishes of the petitioner.

7. To strengthen his arguments, learned counsel for the petitioner has relied upon the Judgment of the Kerala High Court passed in the ***Bail Appl. No.3839/2020, Tijo Varghese vs. State of Kerala, decided on 02.07.2020***

considering all the relevant case laws passed by the Hon'ble Supreme Court mentioned there in the order, squarely covers the present bail application.

8. In another case having similar case like the present one, wherein Hon'ble Supreme Court in case of ***Kaini Rajan vs. State of Kerala: (2013) 9 SCC 113***, has held as under:

“12. ... “consent” for the purpose of section 375, requires voluntary participation not only after the exercise of intelligence based on the knowledge of the significance and moral quality of the act but after having fully exercised the choice between resistance and assent.”

9. Counsel for the petitioner, on instructions, has admitted that petitioner and prosecutrix had physical relations but those were consensual in nature and petitioner never promised her to marry. Moreover, petitioner is apprehensive of the fact that prosecutrix is married, having three children from her wedlock. Though, it is stated in the status report that she had taken divorce from her ex husband before the Panchayat three years back, however, there is no document on record to justify the same.

10. However, without commenting on the merits of the prosecution case which is a subject matter of the trial and in the present facts and circumstances, the petitioner deserves bail.

11. Accordingly, he shall be released on bail on his furnishing a personal bond of Rs.25,000/- with one surety of the like amount to the satisfaction of Trial Court.

12. Petitioner shall not directly or indirectly influence any witness or tamper with the evidence.

13. The Trial Court shall not get influenced by the observation made by this Court while passing the order.

14. The petition is, accordingly, allowed and disposed of.
15. Copy of this order be transmitted to the Jail Superintendent concerned and Trial Court for information and necessary compliance.
16. The order be uploaded on the website forthwith. Copy of the order be also forwarded to the learned counsel through email.

SURESH KUMAR KAIT, J

AUGUST 28, 2020/ab