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

+ **BAIL APPLN. 2228/2020**

SANDESH SHARMA

..... Petitioner

Through: Mr Ravindra Narayan, Advocate.

versus

STATE OF NCT OF DELHI

..... Respondent

Through: Mr Amit Gupta, APP for State with
SI Anurag Tyagi, PS Pul Prahladpur.
Mr Radhey Shyam Pal Singh,
Advocate for complainant along with
complainant in person.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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27.08.2020

[Hearing held through video conferencing]

1. The petitioner has filed the present petition, *inter alia*, praying for bail in connection with FIR No.0185/2020 under Section 376 of the IPC registered with PS Pul Prahladpur.
2. The said FIR was registered at the instance of Ms 'C' (name withheld). She had alleged that she got married to one S.K on 13.11.2017 and was residing with her husband in Delhi. At the material time, she was working as a Sale Executive with a private company. She stated that in December, 2018, she became friendly with the accused (petitioner herein). She alleges that he falsely represented that he would marry her and on that basis, instigated her against her husband. She stated that she believed him and on 15.11.2019, secured a divorce from her husband. It is submitted that,

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thereafter, she started living at her parental house and the petitioner also started living with her at her parental home. She alleged that he established physical relations with her on 01.12.2019 on the promise of marriage and continued to do so on several occasions. She stated that she conceived as a result of their relations. But when she informed the petitioner about the same, he deserted her on 23.04.2020. She further stated that because of certain complications, she had to subsequently abort the foetus.

3. The petitioner claims that he had married the prosecutrix on 19.03.2020. He further states that she was admitted to the MAX hospital on 18.04.2020 and he continued to take care of her. The FIR was registered on 09.05.2020.

4. It is apparent from the above that there is considerable delay in the registration of the FIR. *Prima facie*, the allegations made in the FIR do not disclose an offence committed under Section 376 of the IPC. According to the prosecutrix, she became friendly with the petitioner (in December, 2018) while she was married. She had subsequently divorced her husband and secured the decree of divorce on 15.11.2019. Admittedly, she had been voluntarily cohabiting with the petitioner, thereafter.

5. Mr Pal, learned counsel appearing for the prosecutrix had submitted that the petitioner had promised to marry the prosecutrix on more than three occasions, but had failed to fulfil his promise. He submitted that the petitioner had cheated her and had abandoned her. He denied that the petitioner and the prosecutrix were married at any point of time.

6. In ***Pramod Suryabhan Pawar v. State of Maharashtra and Another: (2019) SCC online SC 1073***, the Supreme Court had observed that “consent with respect to Section 375 of the IPC involves an active understanding of

the circumstances, actions and consequences of the proposed act. An individual who makes a reasoned choice to act after evaluating various alternative actions (or inaction) as well as the various possible consequences flowing from such action or inaction, consents to such action.” Engaging in sex on an inducement of such a kind is a matter of moment. *Pirma facie*, it is difficult to accept that a continuing intimate relationship involving establishing physical relations and cohabiting, for a period of time can be considered as induced and involuntary, and premised only on of promise of marriage and without genuine affection. Given the limited scope of the present proceedings, this Court is refraining from making any further observations.

7. In view of the above, the present petition is allowed and the petitioner is directed to be released on bail on his furnishing a Personal Bond in the sum of ₹5,000/- and one surety of an equivalent amount to the satisfaction of the concerned court/duty magistrate. This is also subject to the following further conditions:-

- a) the petitioner shall provide a contact number and ensure that he is reachable on it at all times; and,
- b) the petitioner shall be available in all proceedings before the concerned court as and when called.

8. The petition is allowed in the aforesaid terms.

VIBHU BAKHRU, J

AUGUST 27, 2020/MK