

\$~6

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

+ **BAIL APPLN. 1580/2019**

SHIV KUMAR KUSHWAHA

..... Petitioner

Through: Mr. Lav Kumar Agrawal, Ms. Usha
Garg and Mr. Vaibhav Saini, Advs.

Versus

STATE OF NCT OF DELHI

..... Respondent

Through: Mr. Amit Chadha, APP for State with
SI Rekha Chawla, PS – New Ashok
Nagar
Ms. Sunita Arora, Adv. for
complainant

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

ORDER

06.02.2020

%

Present petition is filed under Section 438 Cr.P.C. for Anticipatory Bail against FIR No. 272/2019 registered at Police Station – Ashok Nagar, Delhi for the offences punishable under Section 376/506 IPC.

Brief facts of the case are that from 15.04.2018 to 14.04.2019, the Petitioner and prosecutrix stayed in Hotel Corporate Residency, Noida (U.P.). On 15.04.2018, the petitioner made physical relations with the prosecutrix on false promise of marriage. They again stayed at Classic Hotel, Noida on 16.09.2018 and made physical relations with misrepresentation or false promise of marriage. Thereafter, on 06.03.2019, the same incident happened at DSR Classic Hotel Noida and further also on

14.04.2019, at New Corporate Residency Noida. Thereafter, on 06.05.2019, complainant who is about 25 years of age lodged complaint which culminated into the FIR mentioned above.

Learned counsel appearing on behalf of the petitioner submits that on 21.06.2019, petitioner's residence was raided by the police to arrest him. Since petitioner was not available at his residence, he was served a notice under Section 41(a) Cr.P.C. for appearance at Police Station – New Ashok Nagar, Delhi on 25.06.2019.

The present petition is filed on the ground that first information report is being misused and has abused the process of law as there is no case made out against the Petitioner under section 376 IPC and under section 506 IPC against said uncle of petitioner as per the averments of the above said First Information Report. Physical relation between petitioner and complainant was consensual and out of their mutual understanding which is evident from the contents of FIR. It has been stated in the said FIR that she had accompanied the petitioner to various hotels on different dates in Noida, Uttar Pradesh and also continued having conversations with him on mobile phone even after coming back from the said hotels. In these circumstances, it is a clear case of consensual relationship between the Petitioner and complainant, and therefore, no case of section 376 IPC is prima facie made out against petitioner.

Learned counsel appearing on behalf of complainant submits that complainant was taken from her house at Delhi under threat and on false promise of marriage, the accused petitioner established physical relations with her. Since threat was advanced at Delhi, therefore, Delhi Police is competent to investigate the FIR as part offence was committed in Delhi.

To this effect, she made her statement under Section 164 Cr.P.C., wherein she specifically stated that under threat at Delhi, she was taken to Noida and every time, he assured that he will marry her and used to have physical relations on these false promises.

Fact remains that prosecutrix is 25 years of age. At relevant time, she was at the residence of her sister and brother –in–law in Delhi. In their absence, she went with petitioner to Noida and there, admittedly, made physical relations. In the complaint, which is culminated into FIR, it is nowhere mentioned that he advanced threat at Delhi and under threat, she went to Noida. Prima facie, the offence is allegedly committed in Noida, UP. However, without commenting on merits of the case, since the petition for quashing of FIR is pending for disposal, I am of the view that the petitioner is entitled for Anticipatory Bail.

Accordingly, IO/SHO/Arresting Officer concerned, is hereby directed that in the event of arrest, the petitioner be released on bail on furnishing a personal bond in the sum of ₹25,000/- with one surety in the like amount subject to the satisfaction of Arresting Officer/SHO/IO concerned.

Petition stands allowed and disposed of accordingly.

SURESH KUMAR KAIT, J

FEBRUARY 06, 2020

PB