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

Date of decision: 08.01.2020

+ BAIL APPLN. 3238/2019

AAKASH VERMA

..... Petitioner

Through: Mr. K. K. Rai, Sr. Advocate with
Mr. Pulkit Prakash, Mr. Rajeev
Ranjan, Mr. D.P.S. Rajesh, Mr. S.
Chatterjee and Mr. Anshul Rai, Advs.

versus

STATE

..... Respondent

Through: Mr. Kamal Kumar Ghai, APP for
State with Inspector D.K. Tejwani,
WSI Sangeeta, PS – Pandav Nagar
Mr. Yogendra Kumar Tyagi, Adv. for
complainant

.CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

J U D G M E N T (O R A L)

1. Vide the present petition, petitioner seeks bail in FIR No. 436/2019 registered at Police Station – Pandav Nagar for the offences punishable under Sections 376/328 IPC.

2. Case of the prosecution is that the petitioner met the complainant in Amritsar Express while going back to his University to pursue further studies of Engineering. In this meeting, the complainant introduced herself as single and unmarried lady and her son as the son of her sister, whose caretaking is her responsibility. Believing her version of story to be true, the

petitioner got acquainted with the complainant and then exchanged telephone numbers with each other. Subsequent to this meeting the complainant approached the petitioner on his phone number by way of message (sms) and from hereon both the petitioner and the complainant became friends with each other.

3. The petitioner after completing his graduation from Punjab, came to Delhi to pursue his higher education and took a flat on rent at F-159, 02nd Floor, Samaspur Road, Pandav Nagar, New Delhi. The petitioner was residing at said place along with his younger sister till the time he purchased his flat in Sector-70, Noida. The complainant used to regularly visit the house of the petitioner and very soon got friendly not only with the sister of the petitioner but also got acquainted with his parents. Subsequent to the purchase of the flat by the petitioner, he and his sister shifted at his new house where the complainant kept on coming to meet the petitioner as usual. In the meantime, the petitioner figured out the lies spoken by the complainant in respect to her marriage and her son, accordingly, the petitioner started maintaining distance from her.

4. The complainant after realizing the fact that her lies have come to the surface, made a profile of her own on a matrimonial website and got married

to her second husband in June 2019. The petitioner was duly invited to this marriage. The petitioner also got married on 23.11.2019 at Patna. Ironically, it was the complainant who had helped him in making purchases relating to his marriage like Sherwani and the Pagri. The complainant was duly invited in the marriage of the petitioner and she attended the same.

5. On 04.12.2019 the complainant made several calls to the mother of the petitioner threatening her with dire consequences if she does not pay ten lakh rupees (Rs.10,00,000/-) to her and also that the petitioner would take divorce from his wife and marry complainant with immediate effect. She also threatened to commit suicide if her demands were not met and further said that she will leave behind a suicide note, wherein she will implicate entire family of the petitioner.

6. Considering the gravity of the situation, the mother of the petitioner got a criminal complaint registered under section 39 of the Cr.P.C., 1973 in the court of Chief Judicial Magistrate, Vaishali at Hajipur showing her apprehension towards any untoward situation which may happen to herself, her son and her family because of the complainant.

7. On the other hand, the complainant on the same date got a false FIR registered against the petitioner stating that he had initially physically

violated her by giving laced drinks and then subsequently violated her again and again on the false pretext of marriage at his rented premise of Pandav Nagar as well as in a hotel. She also suggests in her FIR that the petitioner has taken nude photographs of her and was also using those photographs as a tool to compel her to make physical relationship with him. Nevertheless, she refused to undergo any sort of medical examination through which the veracity of her claim could have been established.

8. Learned counsel for the petitioner submits that on the complaint made by the complainant, the police officers of Pandav Nagar Police Station approached the petitioner at his job location in Kolkata on 18.12.2019 and asked him to accompany them. The petitioner acknowledging their request took a flight on his own and came down to Delhi on 19.12.2019 to support the police officers in the investigation. The petitioner was arrested on the said date itself and was sent to judicial custody thereafter.

9. Learned counsel for the petitioner submits that the Investigating Officer (IO) in her reply didn't seek remand of the petitioner and clarifies that the nude photographs which are being alleged to be taken by the petitioner have been taken by the complainant herself and then forwarded at the mobile number of the accused by the way of whatsapp (social media

messaging platform). Further states that the hotel in which it is being alleged that petitioner called out the complainant on the pretext of deleting the nude photographs and then compelling her to make physical relationship with him was booked by the complainant herself and not by the petitioner.

10. In addition to above, mother of the petitioner in furtherance to her criminal complaint filed before the Chief Judicial Magistrate, Vaishali, Hajipur has given her statement to the Police Officer of the Pandav Nagar, Police Station wherein, she has specified that how she and her entire family was fooled by the complainant and how she has raised the demand of Rs. 10 lakh to settle out everything in between her and them.

11. Learned counsel, without admitting, however, for the sake of arguments, submits that if any such relation was there with the complainant, it was with her consent, therefore, the case under Section 376 Cr.P.C. is not even made out against the petitioner.

12. The learned counsel appearing on behalf of the complainant submits that the complainant got married in 2005 and has a son from the said wedlock. In the year 2016, she got divorced from her husband. Thereafter, she met the petitioner in a train journey and got befriended with him. He consoled her and said that he will be always by her side. He promised to

marry her. The petitioner used to live in a rented house in Pandav Nagar. He called her at his flat on 26.06.2016 and after talking for a while, he gave her coffee, which she drank and became unconscious. When she regained her consciousness, she realised that there were no clothes on her body. She realised that she had been physically violated in her unconsciousness. When she asked the reason behind his act, he said that in any way, they are going to marry and it does not matter at all and made her shut up. Later, she met with the parents of the petitioner and thereafter, whenever she used to discuss the topic of marriage, the petitioner used to avoid and used to say that he will speak to his parents in his own way. Then in 2017, the petitioner shifted himself in Noida at his own house. He called her there also and violated her physically. The petitioner called the complainant in a hotel, when she refused to honour his words, then he showed her nude photos, which he had taken on 26.06.2016, when she was unconscious. On this pretext, he called her several times to make physical relations and the complainant used to meet him under duress. Learned counsel for the complainant further submits that the charge-sheet is yet to be filed and at this stage, the petitioner should not be released on bail.

13. As stated in the present petition, the complainant herself assisted the

petitioner and his family in planning for the petitioner's marriage and had gone along with him to purchase *Sherwani* and *Pagri* for his marriage. Besides, she was duly invited in the marriage ceremony of the petitioner and she had made wilful gesture of attending the same. The story of the complainant that the petitioner denied to marry her is false and just to extort money. Had her claim been correct, she should have easily raised an alarm about her getting violated by the petitioner that too on multiple occasions in a span of more than three years at multiple locations and anyone could have come forward to help her out in such a situation or atleast would have come forward, stating that they have heard the alarms raised by the complainant, while getting physically violated by the petitioner.

14. It is not in dispute that the statement of material witnesses including complainant has been recorded. Thus, there is no chance of tampering the evidence.

15. It is also not in dispute that the complainant was living with her second husband at the time of the alleged incident. Subsequent to the marriage of the complainant, the petitioner got himself married on 23.11.2019 at Patna. She helped in purchasing things relating to his marriage i.e. *Sherwani* and *Pagri*. Complainant was duly invited in the marriage of

the petitioner and she marked her presence. It is also not in dispute that the mother of the petitioner got a criminal complaint registered under Section 39 Cr.P.C. in the Court of Chief Judicial Magistrate, Vaishali at Hajipur showing her apprehension towards any untoward situation which may happen to herself, her son and her family because of the complainant and also how a demand was made to them for an amount of Rs.10 lakhs to settle all their disputes.

16. In view of the facts recorded above, however, without commenting on the merits of the prosecution case which is pending for investigation, the petitioner deserves to be admitted on bail. Accordingly, he shall be released on bail on his furnishing personal bond in the sum of ₹25,000/- with one surety of the like amount to the satisfaction of the Trial Court.

17. The petition is allowed and disposed of accordingly.

18. Order *dasti* under the signatures of Court Master.

19. Copy of this order be transmitted to the Jail Superintendent and the Trial Court concerned for compliance.

(SURESH KUMAR KAIT)
JUDGE

JANUARY 08, 2020/PB