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

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Delivered on : 25th March, 2021

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BAIL APPLN. 4047/2020

SUHAIL AHMED @ ARHAAN

..... Petitioner

Through: Ms.Tara Narula, Ms.Deeksha Dwivedi and Ms.Aparajita Sinha, Advocates

versus

STATE OF NCT OF DELHI

..... Respondent

Through: Ms.Radhika Kolluru, APP with Investigating Officer, PS Jama Masjid

CORAM:

HON'BLE MR. JUSTICE YOGESH KHANNA

YOGESH KHANNA, J.

1. This petition is filed for grant of regular bail in case FIR No.127/2020, under Sections 376/506/509/342/323/34 IPC registered at PS Jama Masjid, Delhi.

2. The applicant is in judicial custody since 05.07.2020.

3. It is submitted by learned counsel for the petitioner there are material improvements in the statements of the prosecutrix i.e. in her complaint as also in her statement under Section 164 Cr.P.C. It is alleged in her statement under section 164 Cr.P.C. she has denied the place of incident of two dates.

4. Learned counsel for the petitioner says the incident of rape, as per the complaint was on 17.07.2016; second one was on 18.12.2016; third was July, 2019 and lastly on 27.02.2020. It is submitted by learned

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counsel for the petitioner that all along in the compliant the prosecutrix has been saying he committed rape upon the prosecutrix on pretext to marry but whereas in her MLC at page 131 of the paper book she gave the history she was raped on 19.07.2016 in Delhi at hotel Greenland but thereafter she had *consensual sex* for *four years*.

5. Further it is submitted even despite the petitioner being inside jail, she has been calling the brother-in-law of the petitioner as well the lawyer of the petitioner seeking information qua the filing and pendency of the bail application of the petitioner.

6. Further she also have been visiting the jail to meet the petitioner and had made infinite number of calls to the accused voluntarily and sending messages also to the accused, his sisters, brothers-in-law and other relatives and she has been harassing by demanding money and/or share in the property as security for signing the affidavit. She has also admitted of having deposited an amount of Rs.2,000/- in the account of the accused while he was in jail. The petitioner has transcript of tape recorded version of the talk the prosecutrix had with brother-in-law of the petitioner wherein she is forcing him to get her the money and to get the accused family sign an affidavit they have no issues in getting their son married to her.

7. It is the submission of learned counsel for the petitioner it is only because of her conduct the marriage could not take place and despite the fact the family of the accused was earlier intending to marry the accused to the prosecutrix; the photographs from page No.126 to 129 are proof to this fact where she has been integrated with the family of the accused but

because of her conduct as also of her family members the accused had refused to marry.

8. In *Vijayan V. State of Kerala* (2008) 14 SCC 763 it was held:

5. The present case wholly depends upon the testimony of the prosecutrix. The incident in the present case took place seven months prior to the date of lodging the complaint as a realisation dawned upon her that she has been subjected to rape by the appellant-accused. No complaint or grievance was made either to the police or the parents prior thereto. The explanation for delay in lodging the FIR is that the appellant-accused promised her to marry therefore the FIR was not filed. In cases where the sole testimony of the prosecutrix is available, it is very dangerous to convict the accused, specially when the prosecutrix could venture to wait for seven months for filing the FIR for rape. This leaves the accused totally defenceless. Had the prosecutrix lodged the complaint soon after the incident, there would have been some supporting evidence like the medical report or any other injury on the body of the prosecutrix so as to show the sign of rape. If the prosecutrix has willingly submitted herself to sexual intercourse and waited for seven months for filing the FIR it will be very hazardous to convict on such sole oral testimony. Moreover, no DNA test was conducted to find out whether the child was born out of the said incident of rape and that the appellant-accused was responsible for the said child. In the face of lack of any other evidence, it is unsafe to convict the accused. Therefore, we are of the opinion that the view taken by the trial court and the learned Single Judge of the High Court in convicting the appellant-accused under Section 376 IPC cannot be sustained. Consequently, we set aside the judgment and order of the trial court as also of the High Court and quash the conviction and sentence of the appellant-accused under Section 376 IPC. The accused may be released forthwith from custody if not required in any other case.

9. In *Deepak Gulati V. State of Haryana* (2013) 7 SCC 675 it was held:

16. Admittedly, the prosecutrix has never raised any grievance before any person at any stage. In fact, she seems to have submitted to the will of the appellant, possibly in lieu of his promise to marry her. . Thus, a question arises with respect to whether, in light of the facts and circumstances of the present case, the appellant had an intention to deceive her from the very beginning when he had asked the prosecutrix to leave for Kurukshetra with him from Karnal.

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26. To conclude, the prosecutrix had left her home voluntarily, of her own free will to get married to the appellant. She was 19 years of age at the relevant time and was, hence, capable of understanding the complications and issues surrounding her marriage to the appellant. According to the version of events provided by her, the prosecutrix had called the appellant on a number given to her by him, to ask him why he had not met her at the place that had been pre- decided by them. She also waited for him for a long time, and when he finally arrived she went with him to the Karna lake where they indulged in sexual intercourse. She did not raise any objection at this stage and made no complaints to any one. Thereafter, she also went to Kurukshetra with the appellant, where she lived with his relatives. Here to, the prosecutrix voluntarily became intimate with the appellant. She then, for some reason, went to live in the hostel at Kurukshetra University illegally, and once again came into contact with the appellant at the Birla Mandir. Thereafter, she even proceeded with the appellant to the old bus-stand in Kurukshetra, to leave for Ambala so that the two of them could get married in court at Ambala. However, here they were apprehended by the police.

27. If the prosecutrix was in fact going to Ambala to marry the appellant, as stands fully established from the evidence on record, we fail to understand on what basis the allegation of “false promise of marriage” has been raised by the prosecutrix. We also fail to comprehend the circumstances in which a charge of deceit/rape can be leveled against the appellant, in light of the aforementioned fact situation.

10. In view of the law referred to above and also the facts as mentioned in paras 4 to 7 above and considering the accused has already suffered judicial custody for about 8 months and the complainant has been visiting the applicant in jail to meet him and had even deposited Rs.2,000/- in his jail account, the applicant is admitted to bail on his executing personal bond of Rs.20,000/- with one surety in the like amount to the satisfaction of the Trial Court. The petitioner is also directed to provide his contact number/address to the SHO of concerned police station as also he shall keep open his location application in his mobile at all time.

11. The petition stands disposed of in above terms.

12. Copy of this order be sent electronically to the learned Trial Court/ Jail Superintendent for information and compliance.

MARCH 25, 2021

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YOGESH KHANNA, J.