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

+ **BAIL APPLN. 2077/2022**

SI RAHUL

..... Petitioner

Through: Mr. Amit Dhaka with Mr. Lokesh
Payla, Mr. Pradeep Teolia and
Mr. Ajeet Singh, Advocates.

Versus

STATE (GOVT.OF NCT OF DELHI)

..... Respondent

Through: Mr. Amit Sahni, APP for the State.
Mr. Lalit Valecha, Advocate for
respondent No.2.

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Date of Decision: 14th December, 2022

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

J U D G M E N T

DINESH KUMAR SHARMA, J. (Oral)

1. This is an application seeking anticipatory bail in case FIR No.124/2018 under Sections 354/354D/506/509 IPC registered at Police Station Madhu Vihar.

2. Facts, in brief, are that a handwritten complaint dated 24.04.2018 was given by the prosecuterix against the petitioner alleging stalking and molestation. Thereafter, a two-week-long inquiry was conducted by Add.

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DCP-II, East, One female ACP and one lady Inspector and FIR No. 124/2018 was lodged on the recommendations made by the inquiry committee. After the registration of the subject FIR, the prosecutrix gave statement u/s 164 Cr.P.C. and section 376 IPC was added in the present FIR case.

3. It is pertinent to note that the wife of the petitioner has lodged an FIR No.130/2018, PS Madhu Vihar against the prosecutrix, her husband and brother under sections 376D/354B/450/506/ 120B IPC. Charge-sheet of the said case has been filed in the concerned court and same is at the stage of framing of charge.

4. Learned counsel for the petitioner has submitted that since the charge-sheet has been filed, the present petition for anticipatory bail may be treated as a petition for regular bail. He has submitted that the petitioner was not arrested during the course of investigation and therefore he may be admitted to bail.

5. The principle that bail is the rule and jail is the exception has been well recognised through the repetitive pronouncements of the Supreme Court and this Court. This is on the touchstone of Article 21 of the Constitution of India. Supreme Court in **Sanjay Chandra v. CBI** (2012) 1 SCC 40, has observed as under:

“21. In bail applications, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it is required to ensure that an accused

person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty.

22. From the earliest times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some unconvicted persons should be held in custody pending trial to secure their attendance at the trial but in such cases, "necessity" is the operative test. In this country, it would be quite contrary to the concept of personal liberty enshrined in the Constitution that any person should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances.

23. Apart from the question of prevention being the object of refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and it would be improper for any court to refuse bail as a mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an unconvicted person for the purpose of giving him a taste of imprisonment as a lesson."

6. Further, in **Kalyan Chandra Sarkar v. Rajesh Ranjan @ Pappu Yadav and Anr.** (2004 (7) SCC 528), the Supreme Court have reiterated the parameters for granting bail as under:-

"11. The law in regard to grant or refusal of bail is very well settled. The court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the

case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non-application of mind. It is also necessary for the court granting bail to consider among other circumstances, the following factors also before granting bail; they are:

(a) The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence.

(b) Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.

(c) Prima facie satisfaction of the court in support of the charge.”

7. Admittedly, the petitioner was not arrested during the course of investigation and the charge-sheet has already been filed. There is a factum of registration of cross-FIR.

8. I consider that in the totality of the facts and circumstances, the petitioner in event of arrest be admitted to regular bail on furnishing a personal bond in the sum of Rs.20,000/- with one surety of the like amount to the satisfaction of the learned Trial Court subject to the following conditions:

a) the applicant shall not contact the complainant in any manner

b) the Applicant shall under no circumstances leave India without prior intimation of the Court concerned;

- b) the Applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case;
 - c) the Applicant shall provide his/her mobile number(s) to the Investigating Officer and keep it operational at all times;
 - d) In case of change of residential address and/or mobile number, the Applicant shall intimate the same to the Investigating Officer/ Court concerned by way of an affidavit.
9. The bail application stands disposed of in the above terms.

DINESH KUMAR SHARMA, J

DECEMBER 14, 2022
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