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

+ **BAIL APPLN. 3411/2022**

ASHU GAUTAM

..... Petitioner

Through: Mr.Chander Prakash and Mr.Pawan
Kumar, Advocates

versus

STATE AND ANR..

..... Respondents

Through: Mr.Raghvinder Verma, APP for the
State.

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Date of Decision: 15.12.2022

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

J U D G M E N T

DINESH KUMAR SHARMA, J. (Oral)

1. Present bail application has been moved in case FIR No.0248/2022 registered under Section 376/328/506/509 IPC. The proceedings emanated on the statement of the prosecutrix wherein she has alleged that though she was married in 2008 but the marriage did not succeed and she started living with her mother along with the children. The prosecutrix has alleged that she had a chance meeting the petitioner. The petitioner misrepresented to marry her and, on this misrepresentation, established physical relations with her several times. It is alleged that the physical relations were made at a hotel in Paharganj forcibly. The complainant has also alleged that the

petitioner had extended threats to kill her. After investigation, the charge-sheet was filed under Section 376/328/506/509/34 IPC. The petitioner is in custody since 19.05.2022. Learned counsel submits that this is a false case made against him. He submits that even as per the case of the prosecutrix, she was already married and therefore there could not be any false representation of marriage.

2. Learned counsel for the petitioner has submitted that as per charge-sheet filed, the petitioner and the prosecutrix had visited a particular hotel several times. It has been further stated that in fact it was a consensual relation between the two adults. Learned counsel has submitted that in these circumstances, the petitioner may be released on bail.
3. Learned APP has opposed the bail application. He submits that the accused under the false promise exploited the prosecutrix physically. He not only took her to the hotel several times but also administered an stupefying intoxicant and under the influence of it committed rape upon the prosecutrix. It has also come on the record that threats had been extending to the prosecutrix not only by the petitioner but also by his friend namely, Bobby. Learned APP submits that therefore bail may not be granted.
4. In ***Kalyan Chandra Sarkar v. Rajesh Ranjan @ Pappu Yadav and Anr.*** 2004 (7) SCC 528 the parameters for granting bail have been iterated -

"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.”

5. A bare perusal of the FIR makes it clear that the prosecutrix had visited the hotel with the petitioner several times. The prosecutrix has also stated that though she was married and started living separately but there was no divorce with her husband. There is no previous involvement of the petitioner.
6. The plea taken by the defence is that it was a consensual physical relationship between two majors. As per the FIR the exploitation continued from the year 2018. However, the present FIR has been lodged in the year 2022. The parties chose to have physical relationship without marriage for a considerable period of time. The complainant was already married. Admittedly, no divorce had taken place. Thus, apparently there was an obstacle in the marriage. During the trial it is yet to be examined whether the “consent” was vitiated by a “misconception of fact”.
7. Taking into the totality of the facts and circumstances of the case, the accused be release on court bail on his furnishing bail bond in the sum

of Rs.20,000/- with one surety of the like amount to the satisfaction of the trial court subject to the condition following conditions :

- a) the Petitioner shall cooperate in the investigation and appear before the Investigating Officer of the case as and when required;
 - b) the Petitioner shall under no circumstances leave India without prior permission of the Court concerned;
 - c) the Petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case;
 - d) the Petitioner shall provide his/her mobile number(s) to the Investigating Officer and keep it operational at all times;
 - e) the Petitioner shall drop a PIN on the Google map to ensure that his location is available to the Investigating Officer; and
 - f) In case of change of residential address and/or mobile number, the Petitioner shall intimate the same to the Investigating Officer/ Court concerned by way of an affidavit.
8. Copy of the order be sent to the Superintendent of Prison, Central Jail-04, Tihar, New Delhi.
 9. With the above directions, the petition stands disposed of.

DINESH KUMAR SHARMA, J

DECEMBER 15, 2022/rb..