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

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*Reserved on: 11.10.2023
Pronounced on: 31.10.2023*

+ **CRL.REV.P. 487/2023 & CRL.M.A. 11606/2023**

SHARAD SHARMA

..... Petitioner

Through: Mr. Vijay Sharma, Advocate

versus

THE STATE (NCT OF DELHI) & ANR. Respondents

Through: Mr. Manoj Pant, APP for State
with SI Ritu, PS Dwarka
South.

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J.

1. The present revision petition under Sections 397/401 read with Section 482 of the Code of Criminal Procedure, 1973 ('Cr.P.C.') has been filed seeking setting aside of impugned order dated 01.03.2023 passed by learned Additional Sessions Judge (South-West), Dwarka Courts, Delhi ('Trial Court') in Sessions Case No. 165/2022 *vide* which charges have been ordered to be framed against the present accused/petitioner under Sections 376/323/506 of Indian Penal Code, 1860 ('IPC').

2. Brief facts of the case are that an FIR No. 316/2021 under Sections 376/323/506 of IPC was registered at Police Station Dwarka



South on 02.07.2021 against the present accused/petitioner, on the basis of a complaint lodged by the prosecutrix. The prosecutrix had stated that though she originally was a resident of Indore, she had been residing in Delhi for last six years and working as a Cabin Crew in Air Asia Airlines for last two years. It was stated that the accused was working as a Captain in Air Asia Airlines since the year 2017. Both of them had met on 09.01.2021 since they were operating on the same flight of Air Asia Airlines, she as a Cabin Crew and accused as Captain of the said flight. On the said day, both of them had exchanged their mobile numbers, and thereafter, the accused had requested her to accompany him for dinner. On the intervening night of 13/14.02.2021, the accused had proposed the prosecutrix for marriage, and thereafter, he had continued to propose her to get marry to him. In the month of March 2021, the prosecutrix had asked the accused to meet her parents, who were residing in Indore to seek their permission for their marriage. Thereafter, the accused had gone to Indore to meet the parents of prosecutrix and had sought their permission to marry her, and her parents had asked him to arrange a meeting with his parents so that a collective decision of marriage could be taken. Thereafter, the family members of both the prosecutrix and the accused had met and the marriage was finalized, though no date of marriage was fixed. Thereafter, the accused had requested the prosecutrix to stay with him till the time of marriage and had also convinced her that since marriage had already been finalized between them, there was no harm in staying together. The accused had then taken a flat on rent at 'X' Apartments, Dwarka,



New Delhi where both of them lived together from 01.04.2021 till 22.06.2021. During their stay together at the rented flat, the accused had established physical relations with the prosecutrix on several occasions. However, on 15.06.2021, the prosecutrix had found that the accused was talking to one of his ex-girlfriends named 'Y', and when she had inquired about the same, the accused had denied that he was talking to her. The prosecutrix had then come to know that the girl 'Y' is also a Cabin Crew in Air Asia Airlines. The prosecutrix had contacted the girl 'Y' to find the truth about her relationship with the accused, and the girl 'Y' had informed her that accused was having an affair with her for a long time and that he did not intend to marry the prosecutrix herein and was lying about getting married to her only for the purpose of having sexual intercourse with her. Thereafter, girl 'Y' had also shared the proof of chats and photographs exchanged between her and the accused to substantiate her claim. It is alleged that on 22.06.2021, the prosecutrix had confronted the accused with the information which girl 'Y' had shared with her. The accused had, however, kept on denying it and had rather slapped the prosecutrix when she had shown the proof of his relationship with girl 'Y'. When the prosecutrix had tried to run out of the flat to save herself, the accused had caught hold of her, had brought her to the bedroom, had pushed her on the bed and committed sexual assault upon her against her consent. When she had resisted him, he had taken out a pistol and had threatened to kill her. As alleged, the accused had again committed rape upon her at gun point and thereafter, he had also



refused to marry her. The accused had also threatened that in case she will take any legal action against him, he will kill her.

3. As per records, during interrogation, the accused had informed the I.O. that no quarrel had taken place between him and the prosecutrix on 22.06.2021 and the prosecutrix had left the house at about 11 AM for her flight and he had attended an online training at around 9 AM to 1 PM. The accused had further disclosed that on 22.06.2021, his mother was not well and, therefore, he had left the house after dropping WhatsApp message to the prosecutrix. He had further informed the I.O. that on 25.06.2021, a meeting between the families was held and father of the prosecutrix had forced them for a Roka Ceremony on 25.06.2021. The accused had further informed the I.O. that he was in constant touch with the prosecutrix and had exchanged love messages also. Mobile phone of the accused was seized by the I.O. Investigation also revealed that the accused did not have an arms license. The accused was granted anticipatory bail by the learned Sessions Court vide order dated 25.10.2021. Charge sheet was filed without arrest of the accused and charges under Sections 376/323/506 of IPC were framed against him.

4. Learned counsel for the accused/petitioner argues that the present case is a case of consensual relationship between the parties and that the prosecutrix is an educated working woman, who had entered into a relationship with the accused with her consent. It is also stated that though the prosecutrix has alleged that forced sexual intercourse had taken place on 22.06.2021 at gun point, neither any gun has been recovered in this case nor the accused is in possession



of any gun or arms license. It is also argued that even after 22.06.2021, the prosecutrix and the accused had shared intimate WhatsApp messages and information regarding their families, which reflectsthat a false case has been filed against the present accused/petitioner. Therefore, it is argued that impugned order be set aside and petitioner be discharged in the present case.

5. Learned APP for the State, on the other hand, argues that considering the statements of the prosecutrix as well as her mother, there are specific allegations of sexual assault by the accused on the prosecutrix on 22.06.2024 and that a person having no arms license does not mean that he cannot be in possession of a gun. It is also stated that contentions raised before this Court at this stage cannot be considered for the purpose of discharge, and that the prosecutrix can be confronted with the WhatsApp messages, if any, by the accused during the trial. It is therefore prayed that present petition be dismissed since there is no infirmity with the impugned order.

6. This Court has heard arguments addressed by learned counsel for the petitioner and learned APP for the State, and has gone through the case file.

7. The concluding portion of the order dated 01.03.2023, impugned before this Court, reads as under:

“...It is important to mention that statement of Prosecutrix-M U/s 164 Cr.P.C. was got recorded by IO on 03.07.2021 from Ld. MM, Dwarka Courts, New Delhi and the victim has fully supported her complaint in her statement U/s 164 Cr.P.C given before Ld. MM, Dwarka, New Delhi.

At the stage of framing of charge, this Court has to see whether there is sufficient ground for proceeding against the accused. It is axiomatic that even the strong suspicion that the accused has



committed the crime, is sufficient to frame the charges. It is also well settled that the standard of proof adhered to at the final decision of the case is not to be adopted at the stage of framing of charge. The Court is not to appreciate or weigh the evidence, which the prosecution proposes to lead during the trial. Even, otherwise, the veracity of the prosecutrix can only be ascertained after recording her evidence in the Court.

Considering the facts and circumstances of the case, this Court is of the considered view that prima-facie case is made out for the offence punishable **U/s 376 IPC, U/s 323 IPC and U/s 506 IPC** against the accused Sharad Sharma and accordingly, charge for the offences punishable **U/s 376 IPC, U/s 323 IPC and U/s 506 IPC** is framed against the accused Sharad Sharma to which he pleaded not guilty and claimed trial...”

8. This Court has gone through the record as well as the documents which have been placed before this Court and prayed to be relied upon by learned counsel for the petitioner. Having considered the same, this Court is of the opinion that the learned Trial Court has rightly held that at the stage of framing of charge, the only requirement for the Court is to satisfy itself that there is sufficient material on record for the purpose of framing of charge. A strong suspicion against the accused that he has committed the alleged offence is sufficient to frame charge against him.

9. In this regard, this Court has given its thoughtful consideration to the complaint lodged by the prosecutrix, her statement recorded under Section 164 of Cr.P.C. and the details of incident described by her in her MLC dated 03.07.2021. All these statements of the prosecutrix reveal that there are specific allegations of sexual assault being committed upon her by the accused on 22.06.2021. It is not disputed that the families of both the parties had met each other and there was consent on their part for the accused and prosecutrix



getting married, though no date of marriage had been fixed. The prosecutrix has levelled specific allegations that since families of both the parties had met and agreed for their marriage, the accused had committed sexual intercourse with her between 01.04.2021 till 22.06.202 on the pretext that they will be married soon. Therefore, the sexual intercourse in this case had taken place on the pretext of marriage. However, the issue as to whether the 'pretext of marriage' was false or not, can be decided only after both the parties lead their evidence during trial.

10. The story of the prosecutrix that when she had come to know about the another relationship of the accused with another girl 'Y' who had produced incriminating photographs and chats etc. revealing that she was also in a love relationship with the accused, and only when the accused was confronted with it, he had beaten her and had committed sexual assault upon her at gun point as well as had threatened her that she should not take any legal action against him and that he will not get marry to her, are all matters of trial which can be adjudicated upon only after the testimonies of the witnesses are recorded. The contention regarding the accused being in possession of WhatsApp chat messages of days subsequent to the date of alleged incident are all defences of the accused which can be raised before the concerned Court during the appropriate stage of trial.

11. At this stage, the material before the Court, in the form of the contents of FIR and the other statements of the prosecutrix including the one recorded under Section 164 of Cr.P.C. before the Magistrate,



are sufficient to give rise to strong suspicion against the petitioner for commission of offence under Section 376/506/323 of IPC.

12. Considering the overall facts and circumstances of the case and in view of the foregoing discussion, this Court is of the opinion that the order dated 01.03.2023 passed by the learned Trial Court does not suffer from any infirmity and there is no ground to interfere with the same.

13. Accordingly, the present petition alongwith pending application stands dismissed.

14. Nothing expressed hereinabove shall tantamount to an expression of opinion on merits of the case

15. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

OCTOBER 31, 2023/kd