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

+ **BAIL APPLN. 2104/2019**

SUNIL JHA

..... Petitioner

Through: Mr. N.K. Gupta and Mr. H.R. Jha,
Advocates

versus

STATE

..... Respondent

Through: Mr. Raghuvender Verma, APP for
State.
SI Mukesh Kumar, P.S. Vasant Kunj
(North).
Ms. Astha, Advocate (DHCLSC) for
Prosecutrix.

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Date of Decision: 19.01.2023

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 for anticipatory bail under Section 438 of the Cr.P.C. in case FIR No. 124/2019 under Section 376/328 IPC lodged at P.S. North Vasant Kunj.
2. At the outset, it has been stated that the charge sheet has already been filed and the Petitioner is appearing before the learned Trial Court.
3. Learned counsel for the Petitioner submits that Petitioner was granted interim protection by this Court vide order dated 23.08.2019 and the

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same is continuing thereafter. He submits that the Petitioner has never misused the liberty granted to him.

4. IO also states that the Petitioner had joined the investigation as and when directed by the IO.
5. Learned counsel for the Petitioner submits that since the charge sheet has already been filed and the Petitioner was joining the investigation, the interim protection granted to him may be confirmed. Learned counsel submits that even after filing of the charge sheet, this Court can grant anticipatory bail to the Petitioner. To buttress this contention, reliance has been placed upon the judgment of the Supreme Court dated 08.10.2003 passed in Appeal (Crl.) 1250/2003 titled ***Bharat Chaudhary and Anr. v. State of Bihar and Anr.***
6. Learned counsel for the Complainant submits that this is a serious case and bail may not be granted. He submits that the Petitioner has been threatening the complainant/prosecutrix. Learned APP for the State has also opposed the grant of bail.
7. I have considered the submissions of all the parties.
8. The basic rule of criminal jurisprudence is bail and not jail. The Supreme Court and this Court have time and again held that the courts must enforce this principle in practice. It is a settled law that denial of bail amounts to deprivations of personal liberty.
9. The Supreme Court in ***Siddharam Satilingappa Mhetre vs. State of Maharashtra***, (2001) 1 SCC 694, while considering a matter relating

to the grant of anticipatory bail and after exhaustively analysing the rights under Article 21 *inter alia* held that great ignominy, humiliation, and disgrace is attached to an arrest. It was further held that an arrest leads to many serious consequences not only for the accused but for the entire family and at times for the entire community

10. In *Nathu Singh v. State of U.P.*, (2021) 6 SCC 64, the Supreme Court *inter alia* held that grant or rejection of an application under Section 438 Cr.P.C. has a direct bearing on the fundamental right to life and liberty of an individual. Thus, while considering the grant of bail this court has to look into the facts and circumstances of the case so as to ensure that there is no infringement of fundamental rights. Further, it was also *inter alia held* that Section 438 Cr.P.C. needs to be read liberally, and considering its beneficial nature, the courts must not read in limitations or restrictions that the legislature have not explicitly provided for.
11. I have gone through the FIR lodged by the prosecutrix against the Petitioner. The facts, as stated in the status report, indicate that the prosecutrix was taken by the accused to some hotel, where she was asked to take a drink by the accused. She has alleged that subsequent to consuming the drink she felt dizzy and thereafter the prosecutrix was raped. The status report also indicates that the alleged offence was committed on 25.05.2018 and the present FIR was lodged on 06.06.2019. A perusal of the status report also indicates that there is no other involvement of the accused. There is nothing on the record to

suggest that the Petitioner has threatened the prosecutrix in any manner.

12. It is also pertinent to note that the petitioner had been joining the investigation as and when directed by the IO and has not misused the interim order previously granted by this Court. Taking into account the totality of facts and circumstances and the fact that the charge sheet has already been filed and the Petitioner had been joining the investigation as and when directed by the IO, the Petitioner, is admitted to bail on furnishing a personal bond of Rs.25,000/- with one surety of the like amount to the satisfaction of the Investigation Officer/SHO subject to the following conditions:

- a) The Petitioner shall not contact or threaten the prosecutrix in any manner;
- b) The Petitioner shall provide his mobile number(s) to the Investigating Officer and keep it operational at all times; and
- c) In case of a 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.

13. The present bail application stands disposed of in the above terms.

DINESH KUMAR SHARMA, J

JANUARY 19, 2023/kks