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

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Reserved on: 17.11.2023
Pronounced on: 01.12.2023

+ **BAIL APPLN. 3679/2022 & CRL.M.A. 17697/2023**

SOURAV KASHYAP@ SUNNY Petitioner

Through: Mr. A.K. Tripathi, Advocate.

versus

THE STATE GOVT OF NCT OF DELHI
& ANR.

..... Respondents

Through: Mr. Manoj Pant, APP for the
State with SI Ravi Beniwal, PS
Govind Puri.
Mr. Archit Upadhyay,
Advocate for prosecutrix.
Mr. Vishal Kumar, Advocate
for prosecutrix.

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J.

1. This application has been filed under Section 438 of the Code of Criminal Procedure, 1973 ('Cr.P.C.') on behalf of the applicant seeking grant of anticipatory bail in case FIR bearing no. 807/2022, registered at Police Station Govind Puri, Delhi, for the offence punishable under Sections 376/506 of the Indian Penal Code, 1860 ('IPC').

2. Briefly stated, the facts of the case are that on 22.11.2022, a



complaint was lodged by the prosecutrix alleging therein that she had come in contact with the present accused/applicant at a gym and they had become good friends. It was alleged that on 06.06.2022, he had taken her to a rented flat at Govind Puri, Delhi, where he had intoxicated her and had made forcible physical relations with her on pretext of marriage. Thereafter, he had continued to make physical relations with her on multiple occasions on pretext of marriage at various hotels till July, 2022. However, he had refused to get married to her and had started threatening her. Resultantly, FIR bearing no. 807/2022 dated 23.11.2022 for offences punishable under Sections 376/506 of IPC was registered at Police Station Govind Puri, Delhi. The medical examination of the victim was conducted at AIIMS Hospital, Delhi and her statement was also recorded under Section 164 of Cr.P.C. Chargesheet was filed under Section 328/376/506 of IPC.

3. Learned counsel for the applicant/accused argues that the prosecutrix and the accused had consensual relationship and that the prosecutrix herself had called the accused on several occasions. It is stated that on 06.06.2022, she had herself booked the hotel where she alleges that physical relations were established on the pretext of marriage with her. It is also argued by learned counsel that the prosecutrix has been demanding money from the accused and had threatened to implicate him in a false case and in this regard, the accused had already lodged the complaints with the DCP and the SHO, Police Station Sarita Vihar, Delhi and Govindpuri, Delhi on 11.11.2022 and on 16.11.2022, respectively. It is further stated that



the Call Detail Records (CDRs) would reveal that even prior to 09.06.2022, there was no telephonic call between the prosecutrix and the applicant and, therefore, there is no question of committing rape as alleged on 06.06.2022. It is also stated that it is the case of consensual relationship between the parties and the prosecutrix had been insisting on meeting the accused when he was not interested to maintain any relation with her. It is also argued that the applicant has already joined investigation pursuant to grant of interim protection and his custodial interrogation is not required. It is further stated that the he has never threatened the prosecutrix, therefore, bail be granted to the accused/applicant.

4. Learned APP for the State, while opposing the present bail application, argues that statement of the prosecutrix under Sections 161 and 164 of Cr.P.C. was recorded wherein she has supported the case of the prosecution. It is stated that there is another FIR registered against accused/applicant by the prosecutrix and investigation is still ongoing in that case. It is also stated that there is a possibility that the applicant may extend threats to prosecutrix and her family, and therefore, bail application be dismissed.

5. Learned counsel for the prosecutrix, assisting learned APP for the State, has placed on record the conversations exchanged between the parties and the CDRs. It is stated that applicant had threatened the prosecutrix to withdraw the first FIR, which had led registration of second FIR. Learned counsel for the prosecutrix has also drawn this Court's attention to the complaints dated 11.11.2022 and 16.11.2022 lodged by accused/applicant with the police against prosecutrix for



blackmailing him and threatening to implicate him in a false case. It is also stated that learned Trial Court had noted his conduct while dismissing his bail application and that he is also a habitual offender. It is further stated that granting him bail will affect the proceedings, and therefore, bail application be rejected.

6. This Court has heard arguments advanced by learned counsel for the applicant, learned APP for the State and learned counsel for prosecutrix. The material on record has also been perused.

7. In the present case, the allegations levelled against applicant, in a nutshell, are that he had established forceful physical relations with the prosecutrix on multiple occasions on false pretext of marriage in his rented accommodation and in various hotels. The prosecutrix had thereafter also filed a second complaint alleging that applicant had threatened her and her family to withdraw the present FIR.

8. On a perusal of the record, it is revealed that during investigation, the CDRs and mobile location charts of the phone number of the accused/applicant and prosecutrix between 05.06.2022 to 15.06.2022 were obtained by the Investigating Officer, and the analysis of the said CDR reveals that they had exchanged 34 calls between themselves. The prosecutrix has supported the case of the prosecution in statements recorded under Sections 161 and 164 of Cr.P.C. The photocopy of the messages exchanged between the parties were also placed on record by learned counsel for the prosecutrix wherein the applicant has admitted that he had established physical relations with her and he had apologized to her.



Applicant had also promised that he will get married to the prosecutrix only and she should not worry about it.

9. Learned counsel for the accused though states that the applicant had paid money to the prosecutrix on some occasions since she was blackmailing him, he has not been able to produce on record any proof of such payments. The prosecutrix in this case is major, however, that does not lead to a conclusion that the accused/applicant had not promised to marry her.

10. At this stage, material collected on record shows that the physical relations were established between the parties for the first time when the applicant had intoxicated the prosecutrix, and thereafter, he had apologized and promised to get married to her and had also assured her that she should not worry on this account. This Court also notes that applicant was granted interim protection *vide* an order passed by this Court on 09.12.2022, however, a second FIR was lodged by prosecutrix against applicant alleging that he had threatened her to withdraw the first complaint i.e. the present FIR.

11. Considering the overall facts and circumstances of the case and also considering the statements recorded under Sections 161 and 164 of Cr.P.C. of the prosecutrix wherein she had supported the prosecution case and had alleged that physical relations had been established with her on false pretext of marriage on multiple occasions and that the applicant had threatened her to withdraw the first complaint and also that allegations levelled against applicant are of serious nature, this Court is of the opinion that no ground for grant of anticipatory bail is made out at this stage.



12. Accordingly, present anticipatory bail application along with pending application stands dismissed.

13. It is, however, clarified that nothing expressed hereinabove shall tantamount to an expression of opinion on merits of the case.

14. The order be uploaded on the website forthwith

SWARANA KANTA SHARMA, J

DECEMBER 1, 2023/kd