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

+ **BAIL APPLN. 108/2024**

DEEPAK KASHYAP

..... Petitioner

Through: Mr. Akshay Kumar, Ms. Shivani
Bainsla, Mr. Deepak Chaudhary and Mr. Sajid
Hussain, Advocates

versus

STATE NCT OF DELHI

..... Respondent

Through: Ms. Richa Dhawan, APP for State.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

ORDER

28.05.2024

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1. This is an application under Section 438 Cr.P.C. read with Section 482 Cr.P.C. seeking anticipatory bail in case FIR No.890/2023 dated 07.12.2023 under Section 306 IPC registered at PS: New Usmanpur.
2. Status Reports have been filed. It is the case of the prosecution that information was received vide DD No.84A dated 05.12.2023 from HC Amit Kumar from Lok Nayak Hospital at PS: New Usmanpur regarding admission of victim by her brother after she had allegedly set herself on fire at her house. ASI Rakesh reached the hospital and collected the MLC of the victim, wherein the doctor had opined "alleged history of Spillage of Kerosene over self and Pt. herself set fire at home address at 4 PM today". Victim was not fit for statement and was undergoing treatment. Therefore, her statement was not recorded immediately and the MLC was kept pending.



3. It is stated that on 07.12.2023, statement of victim, aged 27 years was recorded in presence of the Doctor, Department of Burns and Plastic Surgery, Lok Nayak Hospital and mother and brother of the victim, where she stated that she was in relationship with a boy named Deepak for the past 5 years and wanted to marry him. However, she felt bad when Deepak refused to marry her and thus, she set herself on fire on 05.12.2023, using turpentine oil. Victim tried to extinguish the fire with the help of her mother and was taken to the hospital by her family. Signature of the deceased could not be taken on the statement as both her hands were burnt and therefore, the statement was signed on her behalf by her brother and mother. Statement of Dr. Anshu Tiwari, Sr. Resident, Department of Burns and Plastic Surgery, Lok Nayak Hospital was taken where she stated that the patient was oriented with time, place and person to give her statement. Present FIR was thereafter registered under Section 306 IPC.

4. It is stated that on 10.12.2023, statement of the victim was recorded in the presence of SDM, Seelampur, in which she corroborated her previous statement and added that applicant made physical relations with her on the pretext of marriage, but refused to marry her later till his demand of Rs.3 lakhs and car was fulfilled. On 05.12.2023 victim had spoken to the applicant in the morning on the phone and he again refused to marry her. Victim narrated that the applicant used to take her to a hotel in Laxmi Nagar and make physical relations with her on the pretext of marriage and that she set herself on fire due to resistance of the applicant to marry her and the demands for dowry and thus Section 376 IPC and Section 4 of Dowry Prohibition Act, 1961 were added.



5. It is stated that on 12.12.2023, further statement of the victim could not be recorded as the doctor declared her unfit for the statement. Interim protection was granted to the applicant on 13.12.2023 by the Trial Court, subject to his joining the investigation. On 13.12.2023 at 04:35 PM, statement of the victim was recorded under Section 164 Cr.P.C. by the Judicial Magistrate in Lok Nayak Hospital in which she corroborated her statement made before SDM, Seelampur. She categorically stated that the applicant and his mother demanded dowry and resisted the marriage and were responsible for her setting herself on fire. This turned out to be dying declaration of the victim as she expired on 14.12.2023 at 04:11 PM in Ward No.20, Department of Burns and Plastic Surgery, Lok Nayak Hospital. On 15.12.2023, post mortem was conducted as per which the death occurred due to “Septicemic shock consequent upon infected burn injuries”. It was opined that all the injuries were ante-mortem in nature involving about 45-50% total burnt surface area. It is brought forth in the status report that applicant has joined investigation but is not co-operating. Two of his mobile phones have been recovered and FSL report is awaited.

6. Learned APP for the State opposes the bail application on the ground that the allegations are serious. Victim has given a statement under Section 164 Cr.P.C. corroborating her earlier version, blaming the applicant and his mother for demanding dowry as a condition to marry and that applicant made repeated physical relations with her on false pretext of marriage. In her dying declaration before the Judicial Magistrate, which is recorded, victim clearly blamed the applicant for the incident. Victim suffered 45-50% burns before she was rushed to the hospital, where she succumbed to her injuries and this is fortified by the MLC. During investigation, call records of the



victim and applicant were analyzed, in which it was found that on 05.12.2023 at 7.47 AM, victim and applicant had a telephonic conversation of 1393 seconds duration. Applicant is not co-operating in the investigation and is not even handing over the mobile phone used since 2018 on one pretext or the other.

7. Learned counsel for the applicant, on the other hand, states that the applicant is innocent and has been falsely implicated in the present case. Victim was in a consensual relationship with the applicant for the past 5 years and the allegations of rape are completely false. It is denied that dowry was demanded from the deceased. Learned counsel submits that applicant is co-operating and has joined investigation on many dates. Latest mobile phones have been seized by the IO and the oldest one is not available with the applicant. It is settled law that there is a presumption of innocence till the accused is held guilty and applicant will be able to establish in trial that the relationship between him and the victim was consensual. No custodial interrogation is required and the applicant will continue to join investigation, as and when called by the IO.

8. Heard learned counsel for the applicant and learned APP for the State.

9. The allegations against the applicant are serious and grave. Victim was rushed to the hospital after she set herself on fire and suffered 45-50% burns, a fact supported by medical record. Significantly, the victim gave statements both before the Executive Magistrate and the Judicial Magistrate pointing fingers at the applicant and his mother as the persons responsible for the incident. The dying declaration given by the victim before the Judicial Magistrate in the hospital was recorded and the Court has seen the video in a pen-drive during the course of hearing, with the consent of



counsel for the applicant and heard the statement made by the victim. It is not disputed that applicant and victim were in relationship for the past 5 years. Victim is consistent in her statement before the SDM and before the learned MM under Section 164 Cr.P.C. that applicant refused to marry her after inducing her into physical relationship and his refusal led to her taking the extreme step of setting herself on fire. There is a serious allegation of demand of Rs.3 lakhs in cash and a car as a pre-condition of marriage. Applicant is not co-operating in the investigation and is resisting in parting with the mobile phone used since 2018, which may contain crucial evidence. Looking at the gravity of the allegations, consistent statements of the victim and her dying declaration, this Court is not inclined to exercise the discretion in favour of the applicant to grant pre-arrest bail.

10. Accordingly, the application is dismissed and interim order dated 09.01.2024 is hereby vacated.

11. It is made clear that nothing stated in the present order shall be construed as an opinion on the merits of the case.

JYOTI SINGH, J

MAY 28, 2024/kks