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

+ **BAIL APPLN. 194/2024 & CRL.M.A. 1505/2024**

SHALINI KALA

..... Petitioner

Through: Mr. Ajay Pratap Singh and Mr.
Rishabh Shukla, Advocates

versus

STATE (NCT OF DELHI)

..... Respondent

Through: Ms. Richa Dhawan, APP for State
with SI Sudesh, PS: Cyber Rohini.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

ORDER

26.04.2024

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1. This application has been filed on behalf of the applicant Shalini Kala D/o Ganesh Kala seeking anticipatory bail in case FIR No. 28/2023 dated 21.06.2023 under Sections 66E/67A of Information Technology Act, 2000 ('IT Act') registered at PS: Cyber Rohini.
2. Status report has been filed on behalf of the State and the case of the prosecution is that a complaint was received at PS: Cyber Rohini through online portal and marked to SI Sudesh. A notice was sent under Section 91 Cr.P.C. to Meta seeking details of Instagram ID 'coolestboyinlovehome' and on the reply being received, it was found that mobile number XXXX was used for verification of the account and registered mail ID was ashwin.kala@yahoo.com. During inquiry, complainant stated that one of his friends residing at Chandigarh informed him that someone had sent his obscene images and objectionable videos to her on Instagram. She



forwarded the screenshots to the complainant and shared the videos. Complainant's friends in Japan also corroborated this. Suspecting that this was an act of his estranged wife, with whom he had serious matrimonial disputes, complainant lodged a complaint against her culminating into the present FIR.

3. It is further stated that during the course of investigation, a notice was served under Section 160 Cr.P.C. to the witness i.e. friend of the complainant at Chandigarh. Her statement was recorded and she produced the phone in which she had received the images and the videos on the Instagram, which was seized. Notice under Section 92 Cr.P.C. was served on the Telecom Company to get details of the mobile number used in the Instagram and on response being received, notice under Section 92 Cr.P.C. was served to get details of the owner of the mobile phone and it was discovered that the number was registered in the name of the applicant. On 06.12.2023, notice under Section 41A Cr.P.C. was served on the applicant to join investigation, which she did and produced the phone, which has been seized. Applicant has joined investigation but is not answering the questions correctly and after every question, she seeks the advice of her counsel.

4. Learned counsel for the applicant states that there has been a matrimonial discord between her and the complainant and FIR No. 306/2022 has been registered against him under Sections 498A/406/506/34 IPC. Petition has also been filed under Section 12 of the Protection of Women from Domestic Violence Act, 2005, which is pending before the learned MM (Mahila Court), South District, Saket Courts, New Delhi. Petition seeking maintenance under Section 125 Cr.P.C. being MT Case No. 408/2022 is also pending before the concerned Court in Saket Courts.



Present complaint is a counterblast to the aforesaid litigation with an intent to settle scores with the applicant and pressurize her to withdraw the litigation.

5. It is contended by the learned counsel that applicant has nothing to do with the alleged offences and is innocent. Offence under Section 66E of the IT Act is a bailable offence while Section 67A of the IT Act has been wrongly invoked, which is evident from a bare reading of the allegations in the FIR. Without prejudice to the same, it is submitted that the applicant has joined investigation after the interim protection was granted by this Court and has been co-operating. There are no allegations of the applicant misusing the liberty granted by the Court and/or threatening or intimidating the witnesses. Punishment for the offences alleged against the applicant does not exceed 7 years of imprisonment as Section 66E provides for imprisonment for a maximum period of 3 years while Section 67A provides for imprisonment for a maximum period of 5 years and therefore, the applicant is entitled to bail under the guidelines elucidated by the Supreme Court in *Arnesh Kumar v. State of Bihar and Another*, (2014) 8 SCC 273.

6. Learned APP on behalf of the State submits that the present case involves a serious crime of cyber fraud and applicant has been using her mobile phone to post objectionable images, photographs and videos of the complainant on the Instagram. It is, however, candidly submitted, on instructions, from the IO present in Court, that *albeit* investigation is underway, looking at the nature of the allegations, custodial interrogation is not required.

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



8. On 18.01.2024, Court had granted interim protection to the applicant against coercive steps, subject to the applicant joining investigation, as and when directed by the IO and co-operating therein. Admittedly, applicant has joined the investigation and it is candidly stated on behalf of the State that custodial interrogation is not required. Applicant cannot be compelled to make self-incriminating statements. It is not the State's case that applicant has misused the liberty granted by the Court and there are no allegations of tampering with evidence or intimidating/threatening any witness. According to the applicant, the backdrop to the complaint is a serious matrimonial discord between her and the complainant and series of litigations are pending between the parties, which is a matter of judicial record.

9. It is a settled law that an accused should not be kept in custody as a punitive measure, as it is a fundamental rule of criminal jurisprudence that bail is the rule and jail is an exception and this principle needs to be enforced in letter and spirit. In *Siddharam Satlingappa Mhetre v. State of Maharashtra and Others*, (2011) 1 SCC 694, the Supreme Court laid down the principles for grant of anticipatory bail and balancing the rights of the prosecution with the rights of the accused under Article 21 of the Constitution of India *inter alia* held that great ignominy, humiliation and disgrace is attached to arrest and also leads to serious consequences not just for the accused but also the family. The same view was taken by the Supreme Court in *Nathu Singh v. State of Uttar Pradesh and Others*, (2021) 6 SCC 64. Parameters for grant of anticipatory bail includes nature and gravity of the offence, role attributed to the accused, chances of the accused absconding from justice etc. There is no doubt that gravity of the offence is an important factor while adjudicating an application for



anticipatory bail but it is equally settled that at this stage, veracity and truth of the allegations cannot be gone into. The need of custodial interrogation and the co-operation of the accused in investigation are factors which the Court cannot gloss over.

10. In the present case, nature of the evidence is primarily documentary in the form of images, photographs and videos, which are already in the custody of the investigating agency from various sources and witnesses. No further custodial interrogation is required, going by the stand of the Investigating Officer. In the totality of the facts and circumstances, it is directed that the applicant shall be released on bail in the event of arrest, subject to furnishing a personal bond in the sum of Rs.25,000/- with two sureties in the like amount each, to the satisfaction of the of the concerned Investigating Officer/Arresting Officer and further subject to the following conditions:-

- i. Applicant shall not leave the country without prior permission of the Trial Court;
- ii. She shall furnish her mobile number to the Investigating Officer and keep the same active at all times and shall not change the mobile number without prior intimation to the Investigating Officer and the Trial Court;
- iii. She shall appear before the Trial Court on each and every date of hearing;
- iv. She shall not, directly or indirectly, indulge in any illegal activity or make any inducement, threat or promise to any person associated with the case including the complainant; and



- v. She shall furnish his current residential address to the Investigating Officer and intimate any change in the same to the Investigating Officer and the Trial Court by way of an affidavit.

11. Application stands disposed of in the aforesaid terms, making it clear that this Court has not expressed any opinion on the merits of the case. Pending application also stands disposed of.

JYOTI SINGH, J

APRIL 26, 2024/kks/shivam