



2024:DHC:497



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

Date of decision: 23.01.2024

+ **BAIL APPLN. 231/2024**

ARVIND BALI

..... Petitioner

Through: Mr.Meet Malhotra, Sr. Adv.
with Mr.Sanjay Abbot,
Mr.Arshdeep Singh, Mr.Shivam
Batra and Ms.Sanjana Mishra,
Advs.

versus

STATE (GOVT OF NCT OF DELHI) & ANR.

..... Respondents

Through: Mr.Aman Usman, APP with SI
Shabnam Saify
Mr.V.Madhakar, Mr.Vishal
Chauhan, Mr.Neeraj Kumar,
Ms.Cheena Chaudhary,
Ms.Sakshi, Mr.Ramesh Pandey
and Ms.Upasana Singh, Advs.
for Complainant.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

CRL.M.A. 1780/2024 (Exemption)

1. Allowed, subject to all just exceptions.

BAIL APPLN. 231/2024 & CRL.M.(BAIL) 108/2024

2. This application has been filed seeking grant of anticipatory bail



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in FIR No. 04/2024 registered at Police Station: Chankya Puri, New Delhi under Section 376 of the Indian Penal Code, 1860 (in short, 'IPC').

3. In short, it is the case of the prosecution that, on 14.09.2023, sexual assault was committed by the applicant on the Complainant at Hotel ITC Maurya, Chanakyapuri, New Delhi, when the applicant made the victim drink juice which was probably mixed with liquor, because of which, she lost consciousness and he committed the said offence on her. In the complaint, the Complainant further alleges that the applicant is a friend of her uncle who had introduced her to him for a job in applicant's company once she had shifted back from the United States of America to India. The applicant is also the CEO of the company in which she was offered the job by him and was working as an Assistant General Manager. She states that she is dependent on the job for survival and out of fear and trauma, she did not have the courage to confront the applicant or to report the incident. It is only when the applicant did not mend his ways that she finally gained courage to make the complaint.

4. The learned senior counsel for the applicant submits that conveniently, the Complainant does not disclose in the complaint that even post the alleged incident, the Complainant and the applicant have been visiting and staying at other hotels, that is, Hotel Courtyard Marriott, Gurugram, on 17.09.2023/18.09.2023, and Hotel Le Meridian, Gurugram, on 13.09.2023. He submits that she also does not disclose that she had attended a Diwali Party hosted by the applicant on 30.10.2023 at the Society Club of his residence, wherein her uncle



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was also present and, in fact, they celebrated her birthday together. He submits that the Complainant also does not disclose that she had tendered her resignation from her job, vide Email dated 12.11.2023, wherein again no allegation was made against the applicant. He submits that this is clearly a case of an afterthought and vengeance being taken out on the applicant due to a relationship turned sour. In support of his application, the learned senior counsel for the applicant places reliance on the judgments of this Court in **Radhye Shyam v. State** 2021 SCC Online Del 4997 and **Rahul Singh v. State** 2019 SCC OnLine Del 10190.

5. The learned senior counsel for the applicant submits that the applicant is ready to join in the investigation and also surrender whichever telephone(s) that the IO may require in the course of investigation. He is also willing to surrender other electronic device(s), in case the IO so requires them for the purposes of investigation.

6. On the other hand, the learned APP for the State submits that, admittedly, the applicant was in superior fiduciary relationship with the Complainant. He submits that, in such circumstances, Section 376(2)(k) of the IPC would get attracted, and in terms of Section 114A of the Indian Evidence Act, 1872 (in short, 'IEA'), there shall be a presumption that the sexual intercourse had taken place without consent of the victim. Placing reliance on the judgment of the Supreme Court in **X v. Arun Kumar CK & Anr.**, 2022 SCC OnLine SC 1529, he submits that, in such circumstances, anticipatory bail should not be granted to the applicant.



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7. The learned counsel for the Complainant submits that the applicant was not only a friend of the uncle of the Complainant, but was even otherwise in a superior dominating position being the CEO of the company where the Complainant gained her job. He submits that the applicant has misused this position of trust to commit the crime which was committed without the consent of the Complainant. He submits that merely because the Complainant has accompanied the applicant on other occasions as well, would not mitigate the crime committed. He submits that these are, in any case, matters of investigation and, at this stage, the applicant should not be granted the indulgence of anticipatory bail.

8. I have considered the submissions made.

9. As is evident from the above, the applicant was in a fiduciary relationship with the Complainant, not only because of the relationship that they otherwise had inasmuch as he had been introduced by the uncle of the Complainant and had helped the Complainant secure the job in India once she moved from USA, but also because he was her superior being the CEO of the company where the Complainant worked. The Complainant, in her complaint, has given details of the incident on the basis of which the alleged FIR has been registered. The applicant, at present, is not denying the same, but is, in fact, trying to justify the same by stating that similar episodes have taken place even subsequently, though with consent of the Complainant. These would be matters of investigation.

10. Keeping in view the provisions of the Section 376(2)(k) of the IPC read with Section 114A of the IEA, and the principles enunciated



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by the Supreme Court *Siddharam Satlingappa Mhetre v. State of Maharashtra & Ors.*, (2011) 1 SCC 694, in my opinion, the applicant has not made out a case for being released on anticipatory bail.

11. The application is, accordingly, dismissed.

12. The pending application is disposed of having been rendered infructuous.

NAVIN CHAWLA, J

JANUARY 23, 2024/ns/RP

Click here to check corrigendum, if any