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IN THE HIGH COURT OF DELHI AT NEW DELHI

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BAIL APPLN. 468/2024

KAMAL SHARMA

.....Petitioner

Through: Mr. Raj Kumar with Mr. Yashbir and
Mr. Mahabir Singh, Advocates.

versus

THE STATE GOVT OF NCT OF DELHI

.....Respondent

Through: Ms. Shubhi Gupta, APP for the State
with SI Akansha Sharma, P.S.:
Mahendra Park.
Mr. Vishal Manya with Ms. Ritu,
Advocates for R2 with R2 in-person.

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

22.08.2024

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By way of the present petition filed under section 439 read with section 482 of the Code of Criminal Procedure 1973 ('Cr.P.C.'), the petitioner seeks regular bail in case FIR No. 801/2023 dated 19.07.2023 registered under sections 376/506 of the Indian Penal Code, 1860 ('IPC') at P.S.: Mahendra Park, Delhi. Consequent upon completion of investigation section 354-C IPC has also been added *vide* chargesheet dated 15.09.2023.

2. Pursuant to what was recorded in last order dated 19.07.2024, learned counsel for the parties inform the court that arguments on charge could not be heard before the learned Sessions Court on the last date since the learned Public Prosecutor was not available.
3. Mr. Raj Kumar, learned counsel appearing for the petitioner submits, that the next date before the learned Sessions Court is 30.09.2024; but in any case, this court may consider the petitioner's bail plea since,



according to the petitioner, no offence is made-out against the petitioner even going by the allegations in the charge-sheet.

4. Notice on this bail petition was issued on 08.02.2024. Status Report dated 04.03.2024 has been filed in the matter.
5. Nominal Roll dated 29.02.2024 has also been received from the Jail Superintendent.
6. Mr. Kumar submits, that the prosecutrix/complainant is about 30 years of age; she is married; and had befriended the petitioner on Instagram. Counsel states that physical relations were made between the parties with the full consent and concurrence of the prosecutrix.
7. Mr. Kumar draws attention to the prosecutrix's statement dated 19.07.2023 recorded under section 164 Cr.P.C., to point-out that the prosecutrix accepts that the petitioner had visited her in her own home on multiple dates, when the two made physical relations. Counsel further points-out that in that statement, the prosecutrix also raises the issue of having given a sum of Rs. 1.5 lacs to the petitioner, which she says was not returned to her. Counsel submits that the genesis of the dispute is this financial transaction between the parties and the allegations contained in the FIR are otherwise totally false.
8. Mr. Kumar argues, that as recorded in the section 164 Cr.P.C. statement, the last alleged incident of physical relations between the parties is stated to have occurred on 06.11.2022; however, the FIR came to be registered some 09 months later, on 19.07.2023. Counsel submits, that the prosecutrix had also declined internal examination and the MLC conducted on 18.07.2023 shows nothing to support any allegation of sexual assault.



9. On the other hand, opposing the grant to bail, Ms. Shubhi Gupta, learned APP appearing for the State submits, that it is the prosecutrix's allegation that she made physical relations with the petitioner since he had promised to marry her.
10. Upon being queried however, Ms. Gupta fairly submits, that as per the record, the prosecutrix was already married and there is no legally acceptable material to show that the prosecutrix had validly divorced her first husband. Learned APP states that in evidence of her claimed divorce from her first husband, the prosecutrix has placed reliance upon a purported Divorce Deed *simply signed between the prosecutrix and her husband*, which records that they have decided to divorce each other by mutual consent; however, there is no record of any court proceedings conducted for dissolution of their marriage, as known to law.
11. The prosecutrix is present in court and is also represented by counsel. Mr. Vishal Manya, learned counsel appearing for the prosecutrix submits, that the petitioner formed physical relations with the prosecutrix on a false promise of marriage. To a pointed question as to whether the prosecutrix herself could have married the petitioner in view of the fact that she was already married, counsel submits that the prosecutrix had signed the Divorce Deed with her husband, and she therefore believed that she was divorced.
12. Nominal Roll dated 29.02.2024 received from the Jail Superintendent records that the petitioner has been in custody for about 07 months as of that date; that his jail conduct is 'satisfactory'; and that he has not been awarded any prison punishment. Though the nominal roll records



that the petitioner is implicated in another case bearing FIR No.565/2021 dated 11.12.2021 registered under sections 376/420/406/34 IPC at P.S.: Narela, Delhi, he is shown to be 'on bail' in that case.

13. Upon an overall conspectus of the facts and circumstances of the case, especially the fact that the prosecutrix is a 30-year old woman, who claims that she made physical relation with the petitioner on a false promise of marriage extended by the petitioner, when she was herself already married; and the fact that there is no other evidence, whether medical or otherwise, in support of the allegation under section 376 IPC, this court is persuaded to grant to the petitioner – **Kamal Sharma s/o Sh. Ashok Sharma** – *regular bail* pending trial, subject to the following conditions :

- 13.1. The petitioner shall furnish a personal bond in the sum of Rs.25,000/- (Rs. Twenty-five Thousand Only) with 02 local sureties in the like amount from family members, to the satisfaction of the learned Trial Court;
- 13.2. The petitioner shall furnish to the Investigating Officer a cellphone number on which the petitioner may be contacted at any time and shall ensure that the number is kept active and switched-on at all times;
- 13.3. If the petitioner has a passport, he shall surrender the same to the learned Trial Court and shall not travel out of the country without prior permission of the learned Trial Court;
- 13.4. The petitioner shall not contact, nor visit, nor offer any inducement, threat or promise to any of the prosecution



witnesses or other persons acquainted with the facts of case. The petitioner shall not tamper with evidence nor otherwise indulge in any act or omission that is unlawful or that would prejudice the proceedings in the pending trial. More specifically, the petitioner shall neither contact nor interact, whether directly or indirectly, with the complainant or her family, in any manner whatsoever. The petitioner shall also not visit the locality in which the complainant stays.

13.5. In case of any change in his residential address/contact details, the petitioner shall promptly inform the I.O.

13.6. Since the petitioner is facing trial and is therefore appearing before the learned Trial Court from time-to-time, it is not considered necessary to impose a reporting requirement as a condition of bail.

14. Nothing in this order shall be construed as an expression of opinion on the merits of the pending matter.

15. A copy of this order be sent to the concerned Jail Superintendent *forthwith*.

16. The petition stands disposed-of.

17. Other pending applications, if any, are also disposed-of.

ANUP JAIRAM BHAMBHANI, J

AUGUST 22, 2024

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