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

+ **BAIL APPLN. 685/2024**

JAINAM RAJ SAVANSUK

..... Petitioner

Through: Mr. Naresh Talwar & Mr. R.P. Yadav, Advocates.

versus

THE STATE NCT OF DELHI

..... Respondent

Through: Ms. Shubhi Gupta, APP with SI Seema (Main IO), PS: Dwarka South and SI Priyanka Saini, PS: Najafgarh, for State.

Mr. Deepak Singh and Mr. Kunal Sejwal, Advocates for and along with complainant in person.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

ORDER

05.04.2024

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1. This application has been preferred on behalf of the Petitioner under Section 438 Cr.P.C. seeking anticipatory bail in case FIR No.35/2024 dated 01.02.2024 registered under Section 376 IPC at PS: Najafgarh.
2. By order dated 26.02.2024, this Court had granted interim protection to the applicant against coercive action subject to his joining investigation and co-operating therein. Prosecutrix was present in Court on the said date and had requested for nomination of a legal aid counsel to prosecute her case. Accordingly, Member Secretary, Delhi High Court Legal Services Committee was requested to nominate a counsel for the prosecutrix.
3. Prosecutrix is present in Court and states that she has hired a private counsel and does not require the services of a legal aid counsel. Ms. Sunita Arora, Advocate is accordingly discharged.



4. Status Report has been filed on behalf of the State.
5. As per the case of the prosecution, present FIR was registered on 01.02.2024 on a complaint made by the prosecutrix stating that she lived with her fiancé in a rented premises and the applicant was of and on visiting them and later requested permission to live with them. Prosecutrix knew him for some time through social media platforms and permitted the applicant to stay with the couple. In October, 2023, when prosecutrix's fiancé was away and she was alone at home, applicant came to her room and forcibly made physical relationships with her against her will and without her consent. He also took objectionable photographs from his mobile phone and threatened the prosecutrix to viral the photographs, if she disclosed the incident to anyone. Putting her under fear, applicant made physical relations with her repeatedly.
6. It is further stated in the Status Report that after the complaint was received, complainant was sent for medical examination at DDU Hospital and thereafter, FIR was registered under Section 376 IPC. During investigation, search was made to find out the whereabouts of the applicant, however, he could not be traced. On 02.02.2024, complainant was produced before the Metropolitan Magistrate for recording her statement under Section 164 Cr.P.C. in which she completely supported the case of the prosecution. On 08.02.2024, Non-Bailable Warrants were issued against the applicant by the Trial Court and on 24.02.2024, proceedings were initiated under Section 82(1) Cr.P.C. On 26.02.2024, applicant filed the present application and interim protection was granted to him. It is further stated that on 28.02.2024, applicant joined investigation and has been co-operating. On the directions of the Investigating Officer, applicant has handed over his



mobile phone, which has been deposited in the *malkhana*. Medical examination of the applicant was conducted and mobile phone has been sent to FSL on 13.03.2024, but the result is awaited. Investigation is complete and charge sheet has been filed.

7. Learned counsel for the applicant states that applicant is innocent and has been falsely implicated by the prosecutrix. The complaint leading to the registration of the FIR was filed by the prosecutrix only to settle scores with the applicant as there was an ongoing dispute with respect to the rent of the premises in which the applicant was staying with the prosecutrix and her fiancé as a paying guest. On 31.01.2023, because of the ongoing dispute, applicant vacated the PG accommodation and on 01.02.2024, when applicant came back to take his belongings, prosecutrix fought with him and called the PCR. The matter was compromised in the presence of SI Jyoti, PS: Najafgarh as the prosecutrix had given a written note that she had called the PCR due to a small argument and she would not pursue the case. Despite this, prosecutrix went ahead to lodge a false complaint only to extort more money.

8. It is urged that applicant is a young boy aged about 23 years and educationally well qualified. He has deep roots in the society and there is no possibility of his running away from justice. Applicant has joined investigation and fully co-operated therein. Since prosecutrix levelled allegations that applicant had taken objectionable photographs in his mobile phone, on the directions of the IO, the mobile phone was instantly handed over and is lying deposited in the *malkhana*. Nothing further is required to be recovered as the investigation is complete and charge sheet has been filed. There are no allegations in the Status Report that applicant misused the



interim protection granted by the Court and/or made any attempt to tamper with evidence or threaten or intimidate the prosecutrix or any person associated with the present case.

9. Ms. Shubhi Gupta, learned APP argues on the lines of the Status Report. She asserts that applicant joined investigation on 28.02.2024 and co-operated. He has surrendered his mobile phone and no objectionable photographs were found in the phone during investigation. The data retrieved from the mobile phone has been sent for forensic examination and FSL report is awaited. She further states that investigation is complete and charge sheet has been filed and the FSL report shall be filed along with a supplementary charge sheet. On instructions from the Investigating Officer, she further states that custodial investigation of the applicant is not required.

10. Learned counsel for the complainant, *per contra*, submits that the allegations against the applicant are serious. He forcibly made physical relationships with the prosecutrix repeatedly and has taken her objectionable photographs from his mobile phone. It would be incorrect for the State to argue that no objectionable photographs were seen in the mobile phone as the truth will surface only when the FSL report is received.

11. Heard learned counsel for the applicant, learned APP for the State and learned counsel for the complainant.

12. This Court is cognizant of the fact that the allegations levelled against the applicant are serious. However, this cannot be a singular factor to deny anticipatory bail to the applicant and due weightage is to be accorded to other factors such as the antecedents of the applicant, his conduct during investigation, requirement of the Investigating Officer for custodial interrogation, stage of the investigation, possibility of the applicant fleeing



from justice and not being available to face trial, etc. Status Report has been filed by the State in which it is stated that investigation is complete and charge sheet has been filed and the FSL report will be filed with the supplementary charge sheet. It is also stated that applicant has joined investigation and has co-operated. Mobile phone has been surrendered and nothing further is to be recovered. In fact, a categorical stand is taken that custodial interrogation of the applicant is not required. It is not the case of the State that applicant is a flight risk or that he has misused the interim protection granted by this Court and either threatened the prosecutrix or any other person associated with the case or attempted to tamper with evidence. Applicant is not involved in any other case and has clean antecedents. In my view, applicant satisfies the triple test for grant of anticipatory bail.

13. Noticeably, proceedings under Section 82 Cr.P.C. were initiated against the applicant, however, he has not been declared as a Proclaimed Offender under Section 82(4) Cr.P.C. and significantly, by order dated 26.02.2024, this Court had granted interim protection to the applicant at the stage when only proceedings under Section 82(1) Cr.P.C. were initiated.

14. Keeping in view the aforesaid facts and circumstances, this Court is inclined to grant anticipatory bail to the applicant. It is directed that in the event of arrest, applicant shall be released on bail, subject to his furnishing a personal bond in the sum of Rs.30,000/- with one local surety from Delhi of the like amount, to the satisfaction of the Trial Court and further subject to the following conditions:-

- i. Applicant shall not leave the country without prior permission of the Trial Court;



- ii. He shall furnish his mobile number to the IO and keep the same active at all times and shall not change the mobile number without prior intimation to the IO and the Trial Court;
 - iii. He shall appear before the Trial Court on each and every date of hearing;
 - iv. He shall not, directly or indirectly, indulge in any illegal activity or extend any inducement, threat or promise to the prosecutrix or any other person associated with the case; and
 - v. He shall furnish his current residential address to the IO and intimate any change in the same to the IO and the Trial Court by way of an affidavit.
15. 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.

JYOTI SINGH, J

APRIL 5, 2024/ B.S. Rohella/kks