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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **BAIL APPLN. 839/2024**

SABIR ISLAM

..... Applicant

Through: Adv. Saddam Hussain.

versus

THE STATE OF NCT DELHI

..... Respondent

Through: Mr. Pradeep Gahalot, APP
for the State.
WSI Aarti, PS Bhalswa
Dairy.

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER
06.03.2024

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CRL.M.A. 7308/2024 (*exemption from filing certified copies of
the annexures*)

1. Exemptions allowed, subject to all just exceptions.
2. The application stands disposed of.

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3. The present application is filed under Section 438 of the Code of Criminal Procedure, 1973 ('CrPC') seeking pre-arrest bail in FIR No. 27/2024 dated 09.01.2024 for offences punishable under Sections 363/376 of the Indian Penal Code, 1860 ('IPC') and Section 6 of the Protection of Children from Sexual Offences Act, 2012 registered at Police Station Bhalswa Dairy.

4. The FIR was registered on a complaint given by the mother of the victim alleging that her daughter had gone to the market to buy vegetables but has not returned. The complainant alleged that some unknown person had enticed the victim and abducted her. During the investigation, on 09.01.2024, the victim

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was found and her statement under Section 164 of the CrPC was recorded wherein she stated that the applicant made forceful physical relations with her on the pretext of marriage. She stated that the applicant had kidnapped her and compelled her to marry and clicked photographs of the victim at the time of Nikah, against her consent. She further stated that the applicant blackmailed her on the basis of the photographs clicked by him and uploaded the same on social media to defame her.

5. The application filed by the applicant seeking pre-arrests bail before the learned Trial Court was dismissed by the order dated 16.02.2024. The learned Additional Sessions Judge-05 (POCSO) Rohini Courts, Delhi had interacted with the victim and noted as under :

“Pursuant to query, the victim has submitted that she was previously in relation with the applicant / accused but when she came to know that accused is already married, then she stopped meeting with him. It is further stated that then the accused kidnapped her and got her forcibly married (nikah) with him and also clicked her some photographs at the time of her forceful nikah. She further submitted that the accused blackmailed her on the basis of the photographs previously clicked by him and he is now uploading photographs on social media to defame her.”

6. The Hon’ble Supreme Court ***in Pratibha Manchanda v. State of Haryana: (2023) 8 SCC 181*** has observed that:

“The relief of anticipatory bail is aimed at safeguarding individual rights. While it serves as a crucial tool to prevent the misuse of the power of arrest and protects innocent individuals from harassment, it also presents challenges in maintaining a delicate balance between individual rights and the interests of justice. The tight rope we must walk lies in striking a balance between safeguarding individual rights and protecting public interest. While the right to liberty and presumption of innocence are vital, the court must also consider the

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gravity of the offence, the impact on society, and the need for a fair and free investigation. The court's discretion in weighing these interests in the facts and circumstances of each individual case becomes crucial to ensure a just outcome.”

(emphasis supplied)

7. The Hon’ble Supreme Court in the case of ***Sumitha Pradeep v. Arun Kumar C.K.***, 2022 SCC OnLine SC 1529 has held as under:-

“16. We are dealing with a matter wherein the original complainant (appellant herein) has come before this Court praying that the anticipatory bail granted by the High Court to the accused should be cancelled. To put it in other words, the complainant says that the High Court wrongly exercised its discretion while granting anticipatory bail to the accused in a very serious crime like POCSO and, therefore, the order passed by the High Court granting anticipatory bail to the accused should be quashed and set aside. In many anticipatory bail matters, we have noticed one common argument being canvassed that no custodial interrogation is required and, therefore, anticipatory bail may be granted. There appears to be a serious misconception of law that if no case for custodial interrogation is made out by the prosecution, then that alone would be a good ground to grant anticipatory bail. Custodial interrogation can be one of the relevant aspects to be considered along with other grounds while deciding an application seeking anticipatory bail. There may be many cases in which the custodial interrogation of the accused may not be required, but that does not mean that the prima facie case against the accused should be ignored or overlooked and he should be granted anticipatory bail. The first and foremost thing that the court hearing an anticipatory bail application should consider is the prima facie case put up against the accused. Thereafter, the nature of the offence should be looked into along with the severity of the punishment. Custodial interrogation can be one of the grounds to decline anticipatory bail. However, even if custodial interrogation is not required or necessitated, by itself, cannot be a ground to grant anticipatory bail.”

(Emphasis Supplied)

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8. The allegations levelled against the applicant are serious in nature. The allegations are not only for an offence under Section 376 of the IPC but also in relation to kidnapping and forcing the victim to marry him. The victim had also stated that the accused is blackmailing her on the basis of photographs which were clicked at the time of alleged forceful marriage.

9. Arrest is a part of procedure of the investigation to secure not only the presence of the accused but also to serve other purposes. The grant of pre-arrest bail to some extent interferes in the sphere of investigation of an offence and hence, the court must be circumspect while exercising such power. The pre-arrest bail is not to be granted as a matter of routine and only when the court is convinced that circumstances exist to resort to the extraordinary remedy, that an order of such nature can be passed. Custodial interrogation is a recognized mode of investigation which is not only permitted but is held to be more effective.

10. Allegation at this stage does not appear to have been made to injure or humiliate the accused.

11. The powers under Section 438 of CrPC are to be exercised judicially. Any order to protect the accused from being arrested can be used as a shield which has a likelihood of hampering the investigation.

12. In view of the above, this Court is of the opinion that it is not a fit case for exercise of discretion under Section 438 of the CrPC.

13. This Court finds no merits in the present application. The same is dismissed.

14. It is, however, made clear that any observations made in the present order are only for the purpose of deciding the present bail application, and should not be treated as an opinion on the

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merits of the case and also should not influence the outcome of the trial.

AMIT MAHAJAN, J

MARCH 6, 2024
“SK”