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

+ **W.P.(CRL) 854/2024**

**VARUN VIRMANI**

..... Petitioner

Through: Mr. Aditya Aggarwal and Ms. Pooja Roy, Advs.

versus

**STATE & ANR.**

..... Respondents

Through: Ms. Rupali Bandhopadhyaya, ASC for State with Mr. Abhijeet Kumar, Adv. SI Vidhi, PS Okhla Industrial Area.

**CORAM:**

**HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA**

**ORDER**

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**14.03.2024**

**CRL.M.A. 8004/2024**

Exemption allowed, subject to just exceptions.

Application stands disposed of.

**W.P.(CRL) 854/2024**

1. Petition under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 ('Cr.P.C.') has been preferred on behalf of the petitioner for quashing of FIR No. 0139/2024 under Sections 376/506 IPC registered at P.S.: Okhla Industrial Area and the proceedings emanating therefrom.

2. Learned ASC for the State appears on advance notice.

3. In brief, as per the case of the prosecution, FIR was registered on complaint of prosecutrix, who alleged that the petitioner was running a furniture business based at Gurgaon and during business dealings, the husband of the complainant/prosecutrix as well as the petitioner became



close and they decided to open a firm, wherein the petitioner was the founder. Further, during business dealings, she was invited to a celebration of a newly opened venture in April, 2022 and during the aforesaid visit, prosecutrix was offered drinks, on consuming which, she became unconscious. It is further alleged by the complainant that the petitioner established sexual relations and later on claimed that he had pictures and videos. Thereafter, she had to make the visits under threat and also the hotel bills were paid through her credit card. The aforesaid relationship is further alleged to have led to divorce proceedings between prosecutrix and her husband.

4. Learned counsel for the petitioner submits that photographs as well as the e-mails exchanged between the petitioner and complainant/prosecutrix would reveal that the relationship was consensual and FIR has been lodged only for the purpose of extortion since the relationship was objected to by husband of the complainant/prosecutrix. It is pointed out that the petitioner has already been granted protection by the learned Trial Court vide order dated 27.02.2024 on an application for anticipatory bail preferred on behalf of the petitioner.

5. On the other hand, the maintainability of the petition is challenged by the learned ASC for the State on the ground that the case is at the initial stage of investigation and the final report is yet to be filed in accordance with law.

6. It is well settled that the power under Section 482 Cr.P.C. may be used if the Court finds that it would amount to abuse of process of Court or the interest of justice so demands that the proceedings may be quashed. The



powers under Article 226 of the Constitution of India read with Section 482 Cr.P.C. need to be exercised with care and caution at the initial stage of investigation. The test to be applied is whether the uncontroverted allegations as made from the record *prima facie* establish the offence or not; or if the allegations are patently absurd and inherently improbable that no prudent person can reach such a conclusion or where the ingredients of criminal offence are not made out. No meticulous examination can be carried out when even the charge-sheet has not been filed. This Court is of the considered opinion that at the threshold the investigation cannot be throttled, merely because anticipatory bail has been granted to the petitioner on the basis of photographs and e-mails relied by the petitioner. The critical analysis of evidence cannot be embarked at this stage and can be adequately marshalled after the final report/charge-sheet is filed.

7. Since the matter is still under investigation, it cannot be *prima facie* opined that the foundation of offence has not been laid. The petition at this stage is premature involving disputed questions of fact which are under investigation and it may be preposterous to invoke the jurisdiction under Article 226 of the Constitution of India read with Section 482 Cr.P.C. As such, the petition is not maintainable and is accordingly disposed of with liberty to the petitioner to file proceedings, if any, after filing of the final report/charge-sheet in accordance with law.

Nothing stated herein shall tantamount to an expression of opinion on the merits of the case.

**ANOOP KUMAR MENDIRATTA, J**

**MARCH 14, 2024/akc**