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

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Reserved on: 30.04.2024***Pronounced on: 02.05.2024***+ **BAIL APPLN. 1267/2024**

GULFISHA

..... Petitioner

Through: Mr. Mohit Mathur, Senior Advocate with Mohd. Amanullah, Mr. Misbah Tariq, Mr. Azhar Ali, Mr. Mayank Sharma and Mr. S.W. Nomani, Advocates

versus

STATE

..... Respondent

Through: Mr. Naresh Kumar Chahar, APP for the State with M.K. Anand, Mr. Dheeraj, Mr. Purti Marwah, Advocates and SI Pushpa, P.S. Shaheen Bagh, Delhi
Mr. Vikas Pahwa, Ms. Radhika Arora & Mr. Abhay Sachan, Advocates for complainant.

CORAM:**HON'BLE MS. JUSTICE SWARANA KANTA SHARMA****JUDGMENT****SWARANA KANTA SHARMA, J.**

1. The instant application under Section 438 read with Section 482 of the Code of Criminal Procedure, 1973 ('Cr.P.C') has been



filed on behalf of the applicant, seeking grant of anticipatory bail in case arising out of FIR bearing no. 94/2024 registered at Police Station Shaheen Bagh, Delhi for offences punishable under Section 376/498A/506/34 of Indian Penal Code, 1860 (*IPC*).

2. Brief facts of the case are that the present FIR was registered on the complaint of complainant alleging therein that in the last week of January, 2024 while she was present in her matrimonial home and one night when she was alone in her room, her father-in-law Mohd. Babu Qureshi had entered the room without clothes and had sexually and physically assaulted her and had threatened her not to disclose this incident to anyone. When she had disclosed this incident to her husband i.e. co-accused Mohd. Faizan Qureshi, her mother-in-law Smt. Hanifa Qureshi and sister in law i.e. the present applicant/accused, they had also assaulted her physically, abused her and threatened her not to disclose this incident to anyone and further they had told her that it is a normal practice at their home. Her father in law had thereafter continued to sexually assault her on many occasions. On 02.03.2024, her brother-in-law i.e. accused Rizwan had also allegedly raped her. It is further alleged that her husband used to threaten her on point of gun. On the intervening night of 03/04.03.2024, when she could not bear mental, physical and sexual assault, she had fallen ill and had become mentally disturbed. Her parents had taken her to the parental home and she had to be admitted to VIMHANS Hospital for her treatment as she was under extreme mental trauma and had suffered from severe depression. After the treatment, she had informed the police about the incident in question.



Her statement under Section 164 of Cr.P.C. was recorded where she had reiterated her initial complaint which she had disclosed to the doctor who had medically examined her and to the Magistrate who recorded her statement under Section 164 Cr.P.C. During course of investigation, the accused persons could not be arrested as they have been absconding.

3. Learned Senior Counsel for the applicant argues that the applicant has been falsely implicated in the present case and that she is fourth year student of B. Pharma and has nothing to do with the alleged offence. It is also stated she, being the younger sister-in-law, could not have abated the offence of rape, nor there are any allegations that she was present when the victim was raped or that she has abated the offence or had instigated the accused persons to commit the offence. It is also argued that the applicant is innocent and the present complaint is false and a counter-blast to the complaint filed by the husband of the complainant against her family. It is stated that the parental home of the complainant is hardly 200 metres away from the matrimonial home and she could have easily approached her parents in case she was subjected to cruelty. It is stated that she did not report the incident of rape of January, 2024 or 3/4.03.2024 when she had gone to her parental home, and there is a substantial delay in registration of present FIR. It is also stated that offence under Section 376 of IPC is not made out against the applicant. In these circumstances, it is prayed that the applicant be granted pre-arrest bail.



4. On the other hand, learned APP for the State as well as learned counsel appearing on behalf of the complainant, argue that the allegations against the accused persons are serious in nature and she has categorically mentioned in her complaint regarding the incidents of sexual assault committed upon her in the last week of January, 2024 and on 02.03.2024. It is further argued that it is not a case of torture alone but the seriousness to the case is added by the fact that the complainant in this case had to be treated at VIMHANS Hospital for a considerable period of time since she had suffered from severe depression due to the atrocities committed by the co-accused persons in this case. It further submitted that even if the allegations against the present accused may be termed as only under Section 498A of IPC by the applicant, the fact that she used to live in the same house can lead to an influence that she was responsible for abetment of the offence in question including sexual assault.

5. This Court has heard arguments addressed by learned counsel for the applicant as well as learned counsel appearing on behalf of State and complainant, and has gone through the material placed on record.

6. In the present case, this Court is of the opinion that the present accused/applicant is the sister-in-law of the complainant and is about 21 years of age and is studying in college. A perusal of the FIR reveals that the allegations against the present applicant are that she keeps her children away from her and does not let her get close to them. The other allegations against the present applicant as per the statement recorded under Section 164 Cr.P.C. are of beating her. The



other allegations are that when the complainant had disclosed the incidents of sexual assault to her, she told her that it was a normal practice in their home.

7. Without expressing any opinion on the merits of the case, this Court is of the opinion that the applicant herein is the sister-in-law of the complainant, who has alleged that she was raped by the father and brother of the applicant and was abused and mentally, sexually and physically tormented and assaulted by her father-in-law, husband and brother-in-law. The allegations against the applicant *prima facie* at this stage appear to be of keeping her children away from the complainant and therefore, in these facts and circumstances though the allegations against rest of the accused persons are grave and serious in nature, the allegations as levelled against the present accused do not require custodial interrogation of the present accused/applicant.

8. Considering the overall facts and circumstances of the case, this Court is inclined to grant pre-arrest bail to the applicant. It is therefore directed that in event of arrest, the applicant shall be released on bail on her furnishing a personal bond in the sum of Rs.10,000/- with one surety of the like amount to the satisfaction of the IO/SHO concerned, on the following terms and conditions:

- i. The applicant shall remain available on mobile number, shared by her with the I.O./SHO;
- ii. The applicant shall not leave country without the permission of the Court concerned;



- iii. The applicant shall join investigation within a period of five days of passing of this order, and shall cooperate with the investigation as and when requested by the I.O.;
9. The present application is accordingly disposed of.
10. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

MAY 2, 2024/ns