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

+ **BAIL APPLN. 2033/2023**

**ABHISHEK VASISTH @ ABHI SHARMA @ ABHINAV
SHARMA**

..... Petitioner

Through: Shri Manoj Swarup, Senior Advocate,
with Mr. Neelmani Pant and Ms.
Apoorva Singh, Advts.

versus

STATE NCT OF DELHI

..... Respondent

Through: Mr. Yudhvair Singh Chauhan, APP
for State with SI Neetu Shekhawat,
PS Barakhamba Road and SI Alka
Sharma, PS Mandir Marg.
Mr. Jaspreet Singh Rai, Advt. for the
complainant.

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

ORDER

% **01.07.2024**

1. The present bail application has been filed under Section 439 read with Section 482 Cr.P.C. for grant of bail in case FIR No 81/2018 dated 10.07.2018, registered at PS Barakhamba Road, New Delhi under Section 377/498A/406/420/468/506/509/323 IPC on the statement of prosecutrix/complaint Ms. M. alleging therein that the petitioner posted his profile on JeevanSathi.com for his marriage with the name of 'Abhinav Sharma' it has been alleged that the petitioner had been using different names and posed himself as owner of Akshaya Deep media, Office at Sec.126, Tapasya Corporate Heights, Ground Floor, Noida Gautam Budh Nagar, U.P.201301 and posed himself as owner of



BMW Car bearing No.DL3CBM 4097 and House No.802, Tower 6, CHD Avenue, Sector-71, Gurugram, Haryana. The parents of the prosecutrix on finding the profile appropriate for the marriage proceeded with the same. The petitioner told that his parents were not alive and he was brought up by his maternal grand-parents and claimed and that he did not have any relatives. The petitioner also represented that he would inherit various properties from his parental as well as maternal grandparents in Kurukshetra, Haryana and Haridwar and his maternal and paternal grandparents use different name i.e. Abhinav Vashisht and Abhishek Sharma so he has changed his name as Abhi Vashisht. The marriage was solemnised on 12.03.2018. The parents of the prosecutrix allegedly spent around Rs.40 lakhs in the marriage and gave gold jewellery weighing 32 tolas i.e. Three Gold Sets, 12 Bangles, Bracelet, Ring, Two Gold Chains including other items worth Rs.25 lakhs. The parents also allegedly gave Rs.5 lakhs for household articles and Rs.2.5 lakhs on different occasions to the petitioner. The petitioner also took Rs.52,000/- using debit card and cash.

2. The prosecutrix alleged that after the marriage, the behaviour of the petitioner changed and he started torturing and harassing her physically and mentally. The complainant/prosecutrix alleged that the petitioner committed unnatural sex upon her including oral sex and anal penetrations against her wishes. The complainant/prosecutrix stated that the petitioner repeatedly committed unnatural sex upon her and had also threatened and physically tortured her.
3. The prosecutrix alleged that on 03.05.2018, the petitioner demanded Rs.11 lakhs cash and when she showed inability of her parents to give



such a big amount, the petitioner gave her beatings and brought her to her parents house forcefully. The prosecutrix alleged that the petitioner threatened her that if she dare to come to his matrimonial house, he would kill her. The petitioner also did not allow the prosecutrix to take her belongings. The complainant stated that the petitioner in fact neither had a house nor the car and he had cheated upon her. The petitioner is also alleged to have been using various mobile phones and the same has also been mentioned in the FIR no. 81/2018 dated 10.07.2018, registered at PS Barakhamba Road. After investigation the charge sheet was filed under Section 377/498A/406/420/468/495/467/506/323 IPC.

4. The learned trial court finding a prima facie case framed the charges vide order dated 27.03.2021 under Section 419/420/467/468/471/406/376(n)493/377/323 and 509 IPC. Shri Manoj Swarup, learned Senior counsel has submitted that the petitioner is in custody for the last more than 5 years. Learned senior counsel for the petitioner has further submitted that the out of all the offences for which the petitioner has been charged, there are only two offenses i.e. under Sections 467 and 376 (2) (n) IPC entails punishment for life and punishment of not less than 10 years or the life. Learned senior counsel for the petitioner submits that in fact both of these offences were not part of the FIR. Learned senior counsel for the petitioner submits that the charge sheet was filed by the IO under Section 467 without any material on record. Learned senior counsel for the petitioner has taken the court through the charge-sheet to emphasize that no reason was given in the charge sheet for attributing Section 467 IPC. Learned



senior counsel for the petitioner has submitted that the attribution of Section 376 (2) (n) IPC is an afterthought and belated and therefore not sustainable. Learned senior counsel for the petitioner submits that the complainant is the legally wedded wife of the petitioner and therefore under exception 2 of Section 376 IPC, the charge could not have been framed against him. Learned senior counsel has submitted that in the order on charge, the learned trial court has only taken prima facie view and therefore this court can very well examine the record and reach on a finding that Section 376 (2) (n) IPC is not made out. Learned senior counsel has also invited the attention of the court to Section 436 A Cr.P.C. to emphasize that the petitioner has undergone custody for more than 5 years which is more than half of the maximum punishment and therefore the petitioner is to be mandatorily release on bail.

5. Learned APP has vehemently opposed the bail application and has submitted that the petitioner has played fraud upon the complainant. It has been submitted by the learned APP and learned counsel for the complainant that in fact, the petitioner was married twice before he was married to the complainant. Learned counsel for the complainant submitted that in fact the marriage with the complainant/prosecutrix cannot be stated to be a marriage at all and therefore the petitioner has rightly been charged for the offence under Section 376 IPC. Learned counsel has further submitted that the petitioner has moved numerous number of applications for bail which have not found favor in any court.
6. The criterion for grant of bail is very well settled in various cases



including *Kalyan Chandra Sarkar vs Rajesh Ranjan @ Pappu Yadav & Anr.*(2004)SCC528). In *Kalyan Chandra Sarkar* (supra), the Supreme Court has held as under:

“11. The law in regard to grant or refusal of bail is very well settled. The court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non-application of mind. It is also necessary for the court granting bail to consider among other circumstances the following factors also before granting bail; they are:

- (a) The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence*
- (b) Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant*
- (c) Prima facie satisfaction of the court in support of the charge.”*

7. The paramount consideration while considering the grant of bail are the nature and gravity of offence and the antecedents of the accused. The court has to take into account the totality of the facts and circumstances. In the present case, the petitioner who was married twice earlier posed himself as an unmarried person and posted his profile on jeevansathi.com. The allegations of sex/unnatural sex by petitioner upon the prosecutrix have been made in the FIR itself. It is a matter of record that the charges have been framed by the Ld. trial court under Section 419/420/467/468/471/406/376(2)(n)/493/377/323 and 509 IPC and that order has not been challenged by the petitioner.



Thus, the order on charge stands unassailed as of now. The court has also gone through the testimony of PW Kavita Sharma with whom as per the prosecution the petitioner had married earlier. Ms.Kavita Sharma stated in the testimony that she was in live-in relationship with the petitioner and the petitioner had also fathered a child with her. Though PW Kavita Sharma turned hostile on the ground of having married the petitioner, but she admitted that she was in live-in relationship with the petitioner. The said witness Kavita Sharma has been declared hostile by the prosecution. The testimony of this witness is yet to be appreciated. It is also pertinent to mention here that the case of the prosecution/complainant is that the petitioner in the similar fashion deceived Riyanka Bakshi. Ms. Riyanka Bakshi has been examined and has supported the case of the prosecution.

8. Nominal roll shows that the petitioner has been involved in some other cases also in U.P. and Punjab and Chandigarh.
9. The facts discussed above *prima facie* reveals that the petitioner despite already having been allegedly married or in live-in relations, posted his profile for marriage on jeevansathi.com. The plea of the learned senior counsel for the petitioner that these allegations were not part of the FIR and have been added later and thus is liable to be rejected as the ground that all such facts surfaced only during the investigation. The allegations of the complainant regarding cheating and unnatural sex are also grievous in nature, particularly in view of the fact that the basic edifice of so-called marriage is based upon alleged fraud.
10. I consider that taking into account the totality of the facts and circumstances, the petitioner is not entitled to be admitted to bail.



Hence, the petition and all the pending applications are dismissed.
However, the court has only expressed *prima facie* view and shall not
be taken as an expression on the merits of the case.

DINESH KUMAR SHARMA, J

JULY 1, 2024

rb/dg*