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IN THE HIGH COURT OF DELHI AT NEW DELHI

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BAIL APPLN. 3985/2021 & CRL.M.A. 17692/2021 (Stay)

MAJOR KUMAR GAURAV

..... Petitioner

Through: Mr. Raj Kamal, Mr. Kartavya Batra,
Ms. Aseem Atwal, Ms. Muskan
Sidana and Ms. Aprajita Tyagi,
Advocates.

versus

STATE OF NCT OF DELHI

..... Respondent

Through: Mr. Mukesh Kumar, APP for the
State.
SI Reena, PS Anand Vihar.
Mr. Shadman Ali, Advocate for
victim/complainant.

CORAM:

HON'BLE MR. JUSTICE AMIT SHARMA

ORDER

29.02.2024

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1. The present application under Section 438 of the CrPC seeks anticipatory bail in case FIR No. 165/2021 under Section 376 of the IPC registered at PS Anand Vihar.
2. The case of the prosecution, as per the status report dated 15.11.2021 authored by SHO, PS Anand Vihar, is as under:

“Most respectfully, it is humbly submitted that present case Vide FIR No.165/21 U/s 376 IPG, dated 28/07/21 was registered on the complaint of Ms. 'N'. After registration of the case the investigation was entrusted to SI Neetu. During the course of investigation victim was medically examined vide MLC no 156/21 at Dr Hedgewar Arogya Sansthan Anand Vihar. In The MLC, doctor mentioned "N" 27 yrs/F Stated that " she got engaged to her fiancée Kumar Gaurav in Feb.2020. In March 2020, on 17 March around 1 to 2 pm, N met Kumar Gaurav in Leela Hotel, Anand Vihar. Kumar Gaurav gave some drugs and she was unconscious. After she gained consciousness, she was naked and Kumar Gaurav made



physical relation with her without her consent. On 18th March 2020, he again made sexual relation. In Sept., 2020, he called her again in Leela Hotel and made sexual relation with her. After January he stopped talking to N and refused to marry her. In April, 2021, he apologised to N and stayed in touch for 2 months and later blocked her phone number." Victim refused for her internal medical examination.

After medical examination, victim was properly counselled by the CIC Counsellor and her statement u/s 161 CrPC got recorded. Thereafter on 29/07/21, a Notice u/s 41(A) Cr.PC was served to the accused Kumar Gaurav on his 'whatsapp' mobile phone number 7991121801. On 30/07/21, SI Neetu along with F . . victim reached at the Leela Ambience Anand Vihar Delhi. Victim led her to room no 1707 & 1727, on 10th floor and told that she was sexually assaulted by accused Kumar Gaurav in those rooms. Hence the site plan was prepared on the instance of victim. The supplementary statement u/s 161 CrPC of victim was recorded she also produced some photographs of her engagement and some 'whatsapp chats' in hard copy. She also produced a pendrive which contained some photographs and audio recordings. A notice was given to victim to produce her mobile phone, but she refused to produce her mobile phone and told that she was having only one mobile phone and she could not deposit the same. All the photographs, hard copy of 'whatsapp chats' and pen drive was taken in police possession through a seizure memo and placed on file. The manager of Leela Ambience hotel, produced the visitor's entry record of date 17/03/20 to 20/03/20 and 03/09/20 to 06/09/20. The same was examined and it was revealed that there were two rooms number 1707 & 1727 which were booked for two adults persons in the name of accused Kumar Gaurav and victim, the IDs of both accused and victim were on the record of Hotel and the same were collected on record and placed on file. Record of date 17/03/20 to 20/03/20 and 03/09/20 to 06/09/20 of hotel was taken in police possession and placed on record. The hotel Manager was examined and his statement u/s 161 CrPC was recorded.

On 06/08/21 the statement u/s 164 CrPC of victim was got recorded by Ms Chakita Srivastava, MM/SHD/KKD Court, Delhi and copy of the same was obtained and in which the victim supported her version."

3. Learned counsel for the applicant submits that the latter is an army officer who got engaged with the victim on 21.02.2020. He further submits that thereafter the relations got sore. He submits that it is not the case of the



prosecution that since inception petitioner had no intention to marry the victim. It is submitted that the applicant was granted interim protection *vide* order dated 17.11.2021, pursuant to which he joined the investigation, which now stands complete and the chargesheet as well as supplementary chargesheet have been filed before the Court of competent jurisdiction.

4. Learned APP for the State, on instructions of the Investigating Officer, submits that pursuant to the interim protection granted by this Court, the applicant joined the investigation which now stands complete and the chargesheet as well as supplementary chargesheet stand filed.

5. Learned counsel for the complainant opposed the present application and submits that the applicant is likely to influence the trial. It is submitted that during the course of investigation, the complainant provided certain material to the Investigating Officer, which were not placed on record alongwith the chargesheet deliberately, on account of the applicant's influence. Learned APP for the State, on instructions of the Investigating Officer, submits that the said material has been placed on record alongwith the supplementary chargesheet.

6. Heard learned counsel for the parties and perused the record.

7. The applicant was granted interim protection by a predecessor bench of this Court, *vide* order dated 17.11.2021. Pursuant thereto, the applicant joined the investigation, which now stands complete. The chargesheet and the supplementary chargesheet stand filed before the Court of competent jurisdiction.

8. In totality of the facts and circumstances of the case, the present application is allowed. In the event of arrest, the applicant is directed to be released on bail on his furnishing personal bond of Rs. 25,000/- with one



surety of like amount to the satisfaction of the learned Trial Court/Link Court/Investigating Officer, further subject to following conditions:

- i. The applicant shall not leave the country without prior permission of the learned Trial Court.
 - ii. The applicant shall intimate the learned Trial Court by way of an affidavit and to the Investigating Officer regarding any change in residential address.
 - iii. The applicant shall appear before the learned Trial Court as and when the matter is taken up for hearing.
 - iv. The applicant shall join investigation as and when called by the Investigating Officer concerned.
 - v. The applicant will not try to influence the witnesses in any manner.
 - vi. The applicant shall provide his mobile number to the Investigating Officer and intimate about any change.
9. The application is allowed and disposed of accordingly.
 10. Pending applications, if any, also stand disposed of.
 11. Needless to state that nothing stated hereinabove is an opinion on the merits of the case.
 12. Order be uploaded on the website of this court *forthwith*.

AMIT SHARMA, J

FEBRUARY 29, 2024/ssc