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

+ **BAIL APPLN. 2074/2024**

MOHAMMAD FAZ

.....Petitioner

Through: Mr. Shamim A. Khan, Adv.

versus

STATE OF NCT DELHI

.....Respondent

Through: Mr. Satish Kumar, APP for State and
SI Nisha Sharma, PS Govindpuri.
Mr. Avneesh Saran, Ms. Anita Saran,
Advs. with complainant.

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

ORDER

01.08.2024

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1. The present application has been filed on behalf of the petitioner/accused seeking grant of regular bail in case FIR No. 0238/2024 dated 17.04.2024 under Section 376/506 IPC registered at PS Govind Puri, Delhi.
2. The facts in brief are that the FIR was registered at the statement of prosecutrix on 17.04.2024. The prosecutrix who is around 23 years of age alleged in the FIR that she knew the accused who is resident of her village and they were good friends. Prosecutrix alleged that the accused often used to tell her to marry him. However, whenever the prosecutrix asked him to come home with the marriage proposal he never came. The prosecutrix stated that thereafter her family married her with Aftab on 03.09.2018 against her wishes. The prosecutrix while living in the



matrimonial home was contacted by Faiz and he used to often call her. The prosecutrix stated that she refused to establish contact with him saying that she is a married women and cannot come to talk with him. However, the accused did not agree to it.

3. In November 2008 while the husband of the prosecutrix was not at home, the accused came and forcibly established physical relations with the prosecutrix. The prosecutrix stated that she got frightened and it was alleged that the accused threatened her that if she makes complaint to the police he would kill her. The prosecutrix stated that under fear she did not disclose this fact to anybody particularly under the fear that the new marriage would be dissolved.
4. The prosecutrix alleged that the accused kept on blackmailing her saying that if she does not agree for the physical relations he would disclose about this to her husband. The prosecutrix stated that in 4-5 years the accused took her to OYO Hotels at Govind Puri, Sarai Kale Khan and Jahangirpuri and established forcible physical relations with her. The accused also threatened that if she tells it to her husband her marriage will be dissolved.
5. It was further alleged that the accused always used to say that he is in love with her and if her husband divorces her, he will marry her. The prosecutrix stated that last time on 11.01.2023 accused took her to BNB Hotel, Jahangirpuri, Delhi and offered to marry her. On 20.01.2024 the accused told about her relation to the prosecutrix's husband on which the quarrel took place between the prosecutrix and the husband.
6. The husband of the prosecutrix divorced her on 26.01.2024. Thereafter,



the accused started ignoring her and refused to marry. The prosecutrix alleged that the accused had made a false promise to marry only to establish physical relations.

7. Learned counsel for the petitioner submits that the petitioner and the prosecutrix knew well with each other for the last 4-5 years. Learned counsel for the petitioner submits that the prosecutrix had gone at her own will with the petitioner several times to the private hotels. Learned counsel submits that it has also come in the investigation as revealed in the status report filed before the Ld. Sessions Court that the prosecutrix has visited the hotel Anand Guest House and Hotel BNB Palace for around 12 times.
8. Learned counsel has relied upon ***Sumit Kumar Vs. State & Anr. BAIL APPLN. 1142/2024***. Learned counsel submits that in this case also the bail was granted taking into account the fact that no date of time of the alleged incident has been mentioned by the prosecutrix. The court took into account the fact that a bald allegation has been made by the prosecutrix about the physical relation being established by the use of force by the appellant.
9. Learned APP for the State has opposed the bail application on the ground that the petitioner had been taking contradictory stands. Learned APP submits that before the Ld. Trial Court the petitioner had taken the defense that he had no relation with the prosecutrix. Learned APP has invited the attention of the court to the order passed by Ld. Additional Session Judge wherein it was observed that in a complaint lodged by the petitioner it was alleged that the prosecutrix got his number from someone and thereafter started pressurizing him to marry



her on the pretext that she has given divorce to her husband and in case if he did not marry her she will commit suicide.

10. Learned APP submits that the facts are serious in nature as the petitioner has physically exploited the prosecutrix and in case the petitioner is released on bail there is a possibility of witness being threatened or intimidating.
11. Learned counsel for the complainant has also submitted that the perusal of the FIR reveals that the petitioner under threat had established physical relations with the prosecutrix. Learned counsel for the complainant further submitted that at no point of time there was free consent of the prosecutrix.
12. The genesis of the present case is that the prosecutrix knew the accused well before the marriage. After the marriage the accused again started meeting the prosecutrix and they had physical relations. The allegation of the prosecutrix is that she had never given her consent and the consent was obtained by fraud and the false promise to marry.
13. It is also alleged that the petitioner threatened the prosecutrix with dire consequences if she does not agree for it or discloses it to anybody.
14. The case of the petitioner now is that the relations were established with the consent. As far as the contradictory defense are concerned, learned counsel for the petitioner submits that the earlier defense was taken on a wrong legal advice.
15. The court at the stage of bail cannot appreciate the fact meticulously. The probative value of the witness cannot be seen at that time. The fact whether the free consent of the prosecutrix was there or it was obtained by fraud or deceit or misconception is matter of trial. At the same time,



whether the consent was given under threat is to be appreciated by the Ld. Trial Court. The petitioner is in custody since 18.04.2024 and there is no other involvement of the accused.

16. Taking into account the facts and circumstances, the accused is admitted to regular bail on furnishing a personal bond of Rs. 20,000/- with one surety of the like amount to the satisfaction of the concerned court/MM/CMM/Duty MM with the following conditions:
- a) the Petitioner shall cooperate in the investigation and appear before the Investigating Officer of the case as and when required;
 - b) the Petitioner shall under no circumstances leave India without prior permission of the Court concerned;
 - c) the Petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case;
 - d) the Petitioner shall provide his/her mobile number(s) to the Investigating Officer and keep it operational at all times;
 - e) In case of change of residential address and/or mobile number, the Petitioner shall intimate the same to the Investigating Officer/ Court concerned by way of an affidavit.
17. In view of the above, the application stands disposed of.

DINESH KUMAR SHARMA, J

AUGUST 1, 2024/AR..