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

+ **BAIL APPLN. 3172/2022**

ILMUDEEN

..... Petitioner

Through: Mr. Amit Chadha & Mr. Sanjog
Singh, Advocates.

versus

THE STATE

..... Respondent

Through: Mr. Amit Ahlawat, APP for the State
with SI Rajnandini, P.S. Paharganj.
Mr. Mohsin Abbas, Advocate for
complainant alongwith complainant
in person.

CORAM:

HON'BLE MR. JUSTICE AMIT SHARMA

ORDER

09.02.2024

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1. The present application under Section 438 of the CrPC seeks anticipatory bail in case FIR No. 395/2022 under Sections 376/509 of the IPC registered at PS Paharganj.

2. The case of the prosecution, as per the status report dated 25.11.2022 authored by the SHO, PS Paharganj, is as under:

“1. It is submitted that about said case has been registered at PS Paharganj on complaint of complainant 'S' D/o T', R/o 'X' (identity is withheld) Age-26 years in her complaint she stated that "she met applicant/ accused in year 2019 through social media. On 11/02/2020 she had called to meet in Delhi outside Jama masjid. Delhi and the applicant/accused told her that since it is evening time and she would get late while going back to her home and further he asked her to stay somewhere nearby. She further alleged that he took her to the signature palace hotel at Paharganj and asked her to wait



outside the hotel and he himself went inside the hotel at the counter and after talking to the hotel staff straight away took her to the room at second floor. After sometime he asks her for her ID card and thereafter went outside the room and after sometime he came back and handed over her ID card. After that she they had dinner together and after sometime the applicant/accused started touching her here and there and ask her to made physical relation with her. She told him that this is wrong and she doesn't want to get indulging in such things despite her refusal applicant/Accused made physical relation with her. She told him that he has done wrong with her and she had come to meet him as a friend, upon which the applicant/ accused told her that he likes her, love her a lot and wanted to get married with her. Applicant/accused had a flight next morning to Ukraine and he left her alone at the hotel room at 5:00 AM. On 09.01.2021 he back to Delhi and ask her to come to Delhi and further told her that they will get married and will remain together forever. She further stated that she same to Delhi on 11.01.2021 and applicant/accused took her to the rented accommodation at H No. 15, 4th floor, Deep Vihar, £/50, Rohini sector 24 and kept her at the accommodation that after he made physical relation with her every day and when she asked him about marriage the he took to her to Tis Hazari court on 18.01.2021 and on pretext of marriage got certain documents prepared and further told her that he will her to his village with all pumps and show before his parents and on 20.01.2021 he left for his village. She further stated that she was in regular conversation with each other and whenever she asked about marriage, he made excuse on one pretext or the other. The prosecutrix further alleged that she tried to speak to the applicant/accused to further speak to his father speak to his father and tau ji regarding their marriage, but he made excuses on different pretext. She further stated that on 2/3/7/2022 she along with her father manage to speak with the applicant/ accused and his father, whereas accused's father made character assassination of the prosecutrix in front of her father over the phone and also said that there are many women like her in the life of accused and further said that the prosecutrix is in the habit of trapping boys and also stated bad words about her character due to which her father was hurt and ask her to go to Delhi and on 20.07.2022 her father committed suicide in front of the train in Jalalabad Uttar Pradesh.

2. After registration of this case, investigation was taken up. During course of investigation, the medical examination of prosecutrix has



been got conducted at LHMC Hospital on 26/08/22 vide MLC No. 175/22 and the prosecutrix didn't go for her internal medical examination.”

3. Learned counsel for the applicant submits that the latter and the complainant knew each other and were engaged in a consensual relationship. It is submitted that the FIR was registered after more than two and a half years of the first alleged incident. It is further submitted that the present FIR was registered only account of the applicant's refusal to marry the complainant, which is not a sufficient ground for invoking the provisions of offence of rape. In support of his contentions, learned counsel for the applicant places reliance on a judgment of the Hon'ble Supreme Court passed in **Criminal Appeal No. 962 of 2022** titled '**Ansar Mohammad v. State of Rajasthan**'.

4. *Per contra*, learned APP for the State assisted by learned counsel for the complainant submits that the allegations against the applicant are serious in nature and the concession of anticipatory bail ought not to be granted to him. Learned APP, on instructions of the Investigating Officer submits that pursuant to interim protection granted by this Court, the applicant has joined the investigation and a chargesheet now stands filed before the Court of competent jurisdiction.

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

6. A perusal of the record reflects that the complaint in the present case was filed two and a half years after the first alleged incident. It is further reflected that the FIR was registered on account of the fact that the applicant refused to marry the complainant. The applicant was granted interim protection *vide* order dated 28.11.2022 passed in the present application and



has been cooperating with the investigation, as and when called by the Investigating Officer. The investigation is now complete and a chargesheet stands filed.

7. In totality of the facts and circumstances of the case, the present application is allowed. In the event of his arrest, the applicant is directed to be released on bail on his furnishing a personal bond in the sum of Rs. 50,000/- with two sureties of the like amount, subject to the satisfaction of the learned Trial Court/Link Court, further subject to the 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 the 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.
8. The application is allowed and disposed of accordingly.
9. Pending applications, if any, also stand disposed of.
10. Needless to state, nothing stated hereinabove is an opinion on the merits of the case and any observations made are only for the purpose of the present bail application.



11. Order be uploaded on the website of this Court, *forthwith*.

AMIT SHARMA, J

FEBRUARY 9, 2024/bsr