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

+ **BAIL APPLN. 3829/2023 & CRL.M.A. 4630/2024 (on record electronic evidence)**

RAHUL SHARMA

..... Petitioner

Through: Mr. Rajive Maini, Ms. Shriya Maini,
Ms. Neeshu Chandpuriya, Advocates.

versus

STATE

..... Respondent

Through: Mr. Amit Ahlawat, APP for the State
with SI Ekta, P.S. Bindapur.
Mr. Gaurav Sharma, Advocate,
DHCLSC for complainant alongwith
complainant in person.

CORAM:

HON'BLE MR. JUSTICE AMIT SHARMA

ORDER

13.05.2024

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1. The present application under Section 439 read with Section 482 of the Cr.P.C. seeks regular bail in case FIR No. 637/2023, under Sections 376/506 of the IPC, registered at P.S. Binda Pur.

2. The case of the prosecution, as per status report authored by SHO, P.S. Bindapur, is as under:

“1. That the present application is filed under section 439 Cr.P.C. on behalf of the applicant in Case FIR No.637/023, U/S 376 506 IPC registered at Police Station Bindapur on 21/09/2023.

2. That the brief facts of the case are that the above mentioned case was registered on the complaint of victim wherein she alleged that Rahul S/o Chaman Lal made physical relation with the complainant on the pretext of marriage. Complainant stated



that she met with Rahul on a matrimonial app. Rahul was ready for the marriage and also met complainant's family. Rahul took money and two "i-Phones" from the complainant. Rahul neither married with Complainant nor returned her the money.

3. After receiving her complaint, accordingly, a criminal case vide FIR No. 637/23; U/s 376/506 IPC was registered and investigation was taken up.

4. That on 21/09/2023, during investigation counseling of victim got conducted by the NGO. After counselling Medical examination of victim was got conducted in DDU Hospital Hari Nagar vide MLC No. 386/23 and site plan was prepared at the instance of victim.

5. The statement U/s 164 Cr.P.C. of victim got recorded in Hon'ble Court of Ms. Divya Singh, Ld MM, Dwarka Court in which victim corroborated the facts of FIR.

6. That on 25/09/23 accused Rahul Sharma S/o Chaman Lal Sharma R/o D/B- 20E, Hari Nagar near Ghanta Ghar Delhi, was interrogated and also recorded his disclosure statement in which he admitted that he cheated victim and bought I Phones and took money and made physical relation with the complainant on the pretext of marriage. Then IO arrested accused in same case. Medical examination of accused got conducted at DDU Hospital vide MLC No. 8602/23 & mobile phone of accused, has been taken into Police Possession through seizure memo. Thereafter the accused was sent to judicial custody.

7. That during further investigation seized mobile phone in the case was sent to FSL for expert opinion. The result of which will be submitted in the Hon'ble Court through supplementary Charge-sheet.

8. That during further investigation, it came to light that accused Rahul did not return complainant's money and i-phones, So, Section 406 IPC was added in the case.

09. That during further investigation, statement of 161 Cr.P.C. of public witness 'P' was recorded wherein she stated that accused Rahul is her friend and he took 1,25,000/- rupees from her and out of which he returned only 50,000/- rupees and still 75,000/- is pending.

10. That during further investigation, victim had given two i-



phones (14 pro MAX) to the accused Rahul and in which price of both i-phones is (1,167.69\$). Out of these i-phones accused got registered a missing report one of these and other one sold to salesman namely Naveen Kumar. Naveen paid 84,000 rupees of that I-phone. Regarding this statement of 161 Cr.p.c was recorded.

11. That after completion of investigation chargesheet u/s 376/506/406 IPC was prepared against the accused persons and filed before the concerned Dwarka Court.

12. That during further investigation, complainant came to PS and gave a Pendrive with 65 B evidence Act certificate. Pendrive was seized through seizure Memo. After that, IO recorded victim's statement U/S 161 Cr.P.C, wherein she stated that this pendrive has contained some close photographs and videos of victim and accused.

13. That the next date of hearing at Dwarka Session Court Delhi is fixed for 28/05/2024.

14. That the offence committed by the accused is serious in nature, therefore, bail application is strongly opposed. The status report is submitted please, the undersigned is ready to abide by the orders/ directions passed by this Hon'ble Court.”

3. Learned counsel appearing on behalf of the applicant submits that the complainant had filed a complaint at P.S. Bindapur on 21.06.2023, wherein the allegations with respect to offence punishable under Section 376 of the IPC were not mentioned. It is further submitted that said complaint primarily was about the money taken by the present applicant from her at various points of time and not returning of the same. Thereafter, it is pointed out that the complainant had also issued legal demand notice dated 03.07.2023 to the present applicant for offence punishable under Section 138 of the Negotiable Instruments Act, 1881. It is further submitted that the complainant has also filed a complaint under Section 138 of the Negotiable Instruments Act, which is pending trial. It is further pointed out that the relation between the



applicant and the complainant was consensual in nature and on account of their monetary differences; the present FIR has been registered by the complainant. Learned counsel for the applicant submits that in the initial complaint filed by the present complainant it was recorded therein that the she had met the present applicant on a social media platform named “Bumble” and in her statement under Section 164 of the Cr.P.C., she stated that they met on a matrimonial match making site.

4. *Per contra*, learned APP for the State, assisted by learned counsel for the complainant, submits that in the first complaint filed by the complainant, it is mentioned that the present applicant had given assurance to the complainant for marriage and the allegation with respect to Section 376 of the IPC were not narrated at that point of time. However, subsequently, a detailed complaint has been filed and the statement of the complainant has been recorded under Section 164 of the Cr.P.C., which corroborates the said allegation. It is further submitted that the complainant has been examined before the learned Trial Court as PW-1 and has supported the case of the prosecution.

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

6. It is a matter of record that in the first complaint dated 21.06.2023, the allegations as contained in the present FIR were not narrated. The present FIR was registered on the complaint dated 24.09.2023. Similarly, it is also a matter of record that the complainant has also filed a complaint against the present applicant under Section 138 of the Negotiable Instruments Act. The investigation in the present FIR is complete and chargesheet stands filed. The allegation made by the complainant is a matter of trial which will be determined after recording of evidence. Nominal roll received from the



concerned Jail Superintendent reflects that the present applicant has been in custody since 25.09.2023.

7. In totality of the facts and circumstances of the case, the present application is allowed. The present applicant is directed to be released on bail, on his furnishing a personal bond of Rs. 50,000/- with two sureties of like amount, to the satisfaction of the learned Trial Court/Link Court, further subject to following conditions:

- i. The applicant shall not leave NCT of Delhi 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 is directed to give his mobile number to the Investigating Officer and keep it operational at all times.
 - v. The applicant shall not, directly or indirectly, tamper with evidence or try to influence the witness in any manner.
8. The application is allowed and disposed of accordingly.
9. Pending applications, if any, also stand disposed of.
10. Needless to state, nothing mentioned hereinabove is an opinion on the merits of the case and any observations made are only for the purpose of the present application.
11. Copy of the order be sent to the concerned Jail Superintendent for necessary information and compliance.



12. Order be uploaded on the website of this court *forthwith*.

AMIT SHARMA, J

MAY 13, 2024/bsr

Click here to check corrigendum, if any