



\$~12

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

+ **BAIL APPLN. 4211/2023 & CRL.M.A. 34317/2023 (for surrender interim bail)**

RAJESH

..... Petitioner

Through: **Mr. Mahipal Singh Rajput & Mr. Yogendra Tripathi, Advs.**

versus

**STATE (NCT OF DELHI) THROUGH
SHO PS BHALSWA DAIRY**

..... Respondent

Through: **Mr. Amit Ahlawat, APP for the State.
W/SI Akansha, P.S. Bhalswa Dairy.
Mr. Gaurav Sharma, Adv. (DHCLSC)
for the complainant.**

CORAM:

HON'BLE MR. JUSTICE AMIT SHARMA

**ORDER
07.05.2024**

%

1. The present application has been filed under Section 439 read with Section 482 of the Cr.P.C. seeks regular bail in case FIR No. 611/2023 under Sections 376/377/506/509 IPC registered at Police Station Bhalswa Dairy.
2. The case of the prosecution is that FIR in the present case was registered on the basis of complaint filed by the survivor wherein she alleged that she was residing alongwith sister 'R' at her native village and stated that her first marriage with 'A' had broken after 10 years of marriage due to matrimonial differences. It is further stated that she had gone to her parental home and thereafter in 2021, a maintenance case was filed by her against her estranged husband, 'A'. It is stated that her sister 'R' had started



talks with the present applicant regarding their marriage but the same could not be fixed. It is alleged that thereafter the present applicant took her number and conversations between them carried on for a period of 5 months. It is alleged that thereafter the present applicant assured her that she should come with him alongwith her daughter and he would take care of them and keep them happy. It is alleged that the complainant went against the wishes of the family members and started living with the present applicant at his residence like husband and wife. It is alleged that after living for one month with the applicant, the latter started having unnatural sex with her and on her refusal, used to beat her. It is further alleged that he used to bring his friends to his house and they used to have drinks and the applicant used to abuse her in front of them. It is stated that she kept quiet with the hope that the applicant would mend his ways. It is alleged that on 11.05.2023, the applicant told the complainant to leave the house, otherwise he would kill her. It is further alleged that thereafter the complainant alongwith her daughter left the residence of the applicant and went to her sister's 'R' house. It is further stated on 18.05.2023, the complainant went to P.S. Bhalswa Dairy and filed a complaint against the applicant which was settled, pursuant to which the complainant again started staying with the applicant. It is further stated that after a few days, the applicant started torturing her again and thereafter, she went to Delhi Mahila Ayog and gave her complaint. Then, she went to the police station and made a complaint on 28.06.2023 in pursuance of which the present FIR was registered. During the course of investigation, her statement under Section 164 of the Cr.P.C. was recorded wherein she corroborated the allegations made against the applicant in the FIR.



3. After completion of investigation, chargesheet has been filed before the court of competent jurisdiction and the matter is at the stage of consideration on the point of charge.

4. Learned counsel appearing on behalf of the applicant submits that the latter has been falsely implicated in the present case. It is pointed out that the marriage of the applicant with the complainant was solemnized on 24.06.2022. It is the case of the applicant that he was not aware of the fact that the complainant had not taken divorce from her first husband, 'A'. It is stated that he had married the complainant on the basis of false assurance given by her that she had taken divorce from her first husband. It is further submitted that when the applicant came to know about the status of the previous existing marriage of the complainant, he filed a petition under Section 11 of the Hindu Marriage Act, 1955 (for short, 'HMA') seeking declaration of marriage between him and the complainant as void marriage.

5. On 18.05.2023, he had also given a complaint in writing regarding the disappearance of the complainant in the concerned police station. It is submitted that the matter was settled and the complainant started residing with the applicant and during this period certain conversations were recorded wherein, the complainant admitted that no unnatural sex was committed by the present applicant. It is further submitted that it is only when the applicant became aware of the previous existing marriage of the complainant, he asked the latter to leave the matrimonial home, on account of which the present FIR has been registered. Learned counsel for the applicant submitted that the applicant has been in custody since 28.06.2023 and chargesheet has been filed after the completion of the investigation. It is further submitted that the applicant has minor children to look after and is



the sole bread earner for his family.

6. *Per contra*, learned APP for the State, assisted by learned counsel for the complainant, submits that complainant has given a categorical statement that she had come to live with the present applicant on the false pretext of marriage and thereafter the allegations made by her *qua* the present applicant are serious in nature. It is pointed out that the case is at the initial stage as charges are yet to be framed and the complainant needs to be examined.

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

8. It is the admitted case of the complainant that at the time when she allegedly started living with the present applicant, her first marriage was subsisting in law and the same had not been annulled by way of any legal proceedings. It is the case of the complainant herself that the present applicant had assured that he would keep her happy when she was staying at his residence. It is also the case of the complainant that they were living like husband and wife at the residence of the present applicant. It is also a matter of record that the applicant has filed a petition under Section 11 of the HMA, which was filed before the registration of the present FIR. The investigation stands complete and chargesheet has been filed. Nominal roll dated 29.01.2024 reflects that the applicant has been in custody since 28.06.2023. Nominal roll further reflects that the applicant was released on interim bail from 29.11.2023 to 14.12.2023 and he had not misused the liberty granted to him.

9. In totality of the facts and circumstances, the application is allowed. The applicant is directed to be released on bail, on his furnishing a personal bond of Rs. 25,000/- with one surety of like amount, to the satisfaction of



the learned Trial Court/Link Court, further subject to following conditions:

- i. The applicant shall not leave India 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.
10. The application is allowed and disposed of accordingly.
 11. Pending applications, if any, also stand disposed of.
 12. 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.
 13. Copy of the order be sent to the concerned Jail Superintendent for necessary information and compliance.
 14. Order be uploaded on the website of this court *forthwith*.

AMIT SHARMA, J

MAY 07, 2024/nk

Click here to check corrigendum, if any