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

\+ BAIL APPLN. 3085/2024

KUNAL ARORA .....Petitioner

Through: Mr. Pritiesh Sabharwal (VC), Mr. Sandeep Mishra, Mr. Subhit Nandan, Advs.

versus

STATE OF NCT OF DELHI .....Respondent

Through: Ms. Priyanka Dalal, APP for State with W/SI Manju, PS Sagar Pur
Mr. Mohammad Danish, Adv. for the prosecutrix
Prosecutrix in-person

**CORAM:**
**HON'BLE MR. JUSTICE DINESH KUMAR SHARMA**

**ORDER**

% **25.10.2024**

1. The present application has been under Section 483 of BNSS, 2023 seeking grant of regular bail in case FIR no. 52/2023 registered under Section 420/34 IPC at PS: Sagarpur. The chargesheet was filed under sections 420/376/467/468/471/34 of IPC. The case of the prosecutrix as set up in the status report is as under:

"*1- That, complaint from Ms Kunti Kumari D/o Sanjay Singh R/o RZ-22, Kh No 77, Gali No 8/5, Sagarpur, Delhi was received at PS. In the complaint, complainant has alleged that she know alleged Kunal Arora since last five years and was in a relation with him since last four years. In year 2019, Kunal Arora asked for financial help from the complainant on the pretext that he required money to pay off his debts. Thereafter, Kunal Arora repeatedly asked money from the complainant and assured to repay the same in short while as he was expecting some payments from his job/ work. On 16.04.2019, Kunal Arora married with the complainant and had got marriage affidavits prepared at District*

*Centre, Janakpuri, Delhi and again demanded money from the complainant. Keeping on faith over the alleged Kunal Arora, complainant handed over her jewellery i.e. One Gold Pendent weight around 4.92 Grams purchased for Rs 28,957/-, one Gold Ear tops weight around 3.330 grams purchased for Rs 6,500/-, One gold ring weight around 1.900 grams purchased for Rs 74,749/-, One gold chain weight around 12.550 grams and Gold Locket weight around 3.12 grams purchased for Rs. 51,900/-. Alleged Kunal Arora induced the complainant to mortgage the above gold with alleged Ketan Khattar, Proprietor of M/s Khattar Jewellers having shop at Shop No 16-7, Arya Samaj Mandior Market, Mangal Bazar, Uttam Nagar, Delhi. It has been alleged that both were known to each other and they both used to cheat girls in same manner. Complainant has requested for the valuation of gold, but both the alleged persons had assured and induced that the gold is safe with Ketan Khattar and had paid the amount to Kunal Arora and did not handed any amount or receipt to complainant in respect to valuation of the Gold. In July 2020, complainant requested Kunal Arora to get the gold released from Ketan Khattar, Kunal Arora flatly refused to repay Ketan Khattar for release of gold and then she approached Ketan Khattar and informed that she was willing to repay the loan taken by Kunal Arora. Ketan Khattar refused to take amount and handover back the Gold to complainant besides of her several requests. It has been further alleged that both the alleged persons started threatening the complainant, started using abusive and filthy language. Alleged Ketan Khattar stated that he will defame her and shall edit and forge her photographs and shall viral in internet after editing it. Complainant also approached Hon'ble Court u/s 156 (3) CrPC and as per the directions of Hon'ble Court a case vide FIR No 0052/23 dated 16.01.2023 u/s 420/34 IPC PS Sagarpur, Delhi has been registered.*

*2- That, during the course of investigation complainant produced an Affidavit bearing Certificate No: IN-DL74283878316259R & IN- DL74283878316260R dated 16-Apr-2019, which was given to her by alleged Kunal Arora in respect of her marriage with the complainant. Complainant stated that to gain her faith, alleged Kunal Arora provided her the afore-said affidavits on behalf of* *both the persons with regard to their marriage.*

*3- That, Statement of complainant was recorded in detail, in her statement complainant stated that she is doing work at Neha Parlor, Tilak Nagar, Delhi since last 3 years. In year 2016, she attended a marriage ceremony of brother of her friend, where she met with Kunal Arora s/o Rajkumar R/o A1/234 Upper Ground Floor Hastsal Road, Uttam Nagar New Delhi. Thereafter, they remained in constant touch with each other. During the meeting Kunal Arora on the pretext of his loan started extracting money from her. She handed over amount of Rs 50,000/- in cash to Kunal Arora, Kunal Arora assured that he refunded the said amount. During this period Kunal Arora offered marriage with her, thereafter, around 02 years, they both stayed at Oyo Hotel, where alleged Kunal Arora on the pretext of marriage made physical relations with her on many occasions, all the money was spent by her. After making him believe, Kunal Arora also got financed one account from his friend and also got financed one mobile phone. To further gain his faith alleged Kunal Arora provided her an Affidavit in year 2019 with regard to their marriage. After making fool of her alleged Kunal Arora also sold her property worth Rs 7 Lakhs and take possession of all the property papers. When she asked him to take her at house of his parents, he started neglecting her. Kunal Arora also provided her and Receipt- Cum - Declaration that he received Rs 11 Lakhs from her and re-pay / return the afore-said loan amount on 04.08.2019 from the date of Receipt Cum Declaration and issued 03 Cheques, which stands 'Bounced'.*

*4- That, complainant alleged that alleged Kunal Arora on the pretext of marriage made physical relations with her without her consent and to gain his confident also provided Affidavit with regard to their marriage. Complainant further stated that whenever she conceived, alleged Kunal Arora terminates her pregnancy by providing her pills. Complainant also stated that she filed her complaint with CAW Cell, Delhi Cantt against Kunal Arora, CAW Cell issued notice to Kunal Arora and during the counseling period Kunal Arora, categorically denied that neither he solemnized marriage with complainant nor known to the* *complainant.*

*5- That, in response of notice, the information was received from Manager Oyo Hotel, on perusal of the same, it came to light that on several occasions accused alongwith victim visited the hotel and on each occasion single ID was submitted to the reception desk.*

*6- That, as per the statement of the complainant, section 376 IPC was added in the present cases.*

*7- That, medical examination of the complainant was got conducted, on the MLC of complainant doctor reported UPT-Negative and brief description of the incident as "Kunti Kumari, 28 Years/ Female gives alleged history of sexual assault by Kunal Arora, 29 Yrs R/o Subhash Nagar in year 2016, Survivor first met with the accused in a friend's wedding in 2016 at Paschimpuri, Delhi where both becomes friends and exchanged phone numbers. Accused called her to meet at a hotel in Palam where he sexually assaulted her. As per survivor, accused took her naked photographs, started blackmailing her and sexually assaulted her multiple times. In 2017, survivor got pregnant and accused gave her tablets to abort the pregnancy in 2018. Accused promised her to marry her and made a fake document of marriage on which both signs are present. Accused took her gold and money also.*

*8- That, on 02.11.2023, statement of complainant u/s 164 CrPC was recorded before the Hon'ble Court, wherein she corroborates her complaint and statement.*

*9- That, the affidavits produced by the complainant were got verified from the concerned Notary. On verification Sh J K Sharma informed / verified that "The two affidavits Kunal Arora s/o R K Arora R/o D-86, Arya Samaj Road, Uttan Magar, New Delhi and other Kunti Kumari D/o Sanjay R/o RZ-22, Kgh 77, Gali 8/5, Sagarpur, Delhi were seen and observed, these two affidavits were not attested by me and the seal (round) also does not belongs to mine. These affidavits were not registered in my Notary Registrar. So, I (J K Sharma) do not concern with them for attestation purpose, have no record of these Affidavits from my* *notary register. Section 467/468/471 IPC were also added in the present case.*

*10-That, on 24.02.2024, the petitioner/ accused Kunal Arora s/o Raj Kumar R/o A- 1/234, Upper Floor, Hastasal Road, Uttam Nagar was arrested in the present case. The mobile phones of the accused were taken into police possession.*"

2. Learned counsel for the applicant submits that the present FIR was lodged under section 40/34 IPC pursuant to the direction under complaint case filed Section 156 (3). Learned counsel submits that offence under Section 376 IPC was added later on pursuant to the statement recorded under Section 161 Cr.P.C. Learned counsel submits that even in the charge-sheet, the complainant has simply stated that she had been in relation with the applicant for last five years and during those five years, the applicant had established physical relations with her by taking her consent fraudulently. Learned counsel submits that the applicant is in custody since 24.02.2024.
3. Learned APP for the State has vehemently opposed the bail application arguing that the investigation so far has revealed serious materials against the applicant. Learned APP submits that it was found that the affidavits by which the applicant assured the complainant that the marriage had taken place were found to be forged. Learned APP has further submitted that simply because allegations of Section 376 IPC were not made in the initial complaint, the seriousness of such allegations is not diminished in any manner. Learned APP has also submitted that further investigation is going on and the police may file a supplementary charge-sheet against Ketan Khattar.
4. Learned counsel for the complainant has also opposed the bail

application, arguing that the applicant is a habitual offender and has ruined the lives of many girls. Learned counsel submits that the applicant has been physically exploiting the victim for the last five years and besides cheating her financially, has also spoiled her physically. Learned APP, on instructions, submits that the IO is not aware of any other involvement of the applicant.

5. The criteria for grant of bail in heinous offences are very well settled. The consideration to be taken into account while grant of regular bail are the nature and gravity of the respondent's accusations and the antecedents of the applicant, possibility of the Applicant to flee from justice, the possibility of threatening and intimidating the witnesses and other circumstances. However, it is a settled rule that the Court at the stage of the bail cannot hold mini trials and has to see only the *prima facie* case as produced by the prosecution. The Court, at this stage, cannot meticulously examine the facts of the case nor should make any comments so as to prejudice either of the parties.

6. In the present case the parties were admittedly in a consensual relation for last five years. It is a matter of record that initially the complainant was lodged regarding some financial transactions and there were allegations of cheating against the applicant and Ketan Khattar. Subsequently, in the supplementary statement, the allegations of rape were made which lead to the addition of Section 376 IPC. As per submissions of the learned counsel for the applicant, the applicant has not given any specific date, time and place of the alleged offence and it has simply been stated that the applicant had been establishing physical

relations with the complainant for the last five years. The Court considers that it is a matter of trial.

7. In the peculiar facts and circumstances and without making comments on the merits of the case, the applicant is admitted to regular bail upon furnishing a personal bond of Rs. 20,000/- with one surety of the like amount to the satisfaction of the concerned learned trial court, subject to the verification of address and provide his mobile number(s) and subject to the following further conditions:
   a) the applicant shall regularly appear before the IO/trial court as and when directed;
   b) the applicant shall not directly or indirectly make any inducement, threat, intimidate or tamper with any person acquainted with the facts of the case;
   c) the applicant shall remain available on the address, to be given to the IO and shall not leave the country without the permission of the learned Trial Court;
   d) In case of change of residential address and/or mobile number, the applicant shall intimate the same to the Investigating Officer/ Court concerned by way of an affidavit.
8. With the above directions, the application is disposed of.
9. A copy of this order be sent to concerned Jail Superintendent for information and necessary compliance.

**DINESH KUMAR SHARMA, J**

**OCTOBER 25, 2024**
JN/HT..