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

+ **BAIL APPLN. 4353/2023, CRL.M.A. 35673/2023**

AMIT GUPTA

..... Petitioner

Through: Ms. Leelawati Suman and
Mr. Pardeep Shukla, Advocates.

versus

STATE NCT OF DELHI

..... Respondent

Through: Ms. Shubhi Gupta, APP for State with
SI L.Lama, PS: Sagar Pur.
Mr. Alok Kumar Tripathi and Mr. Darshan Doliya,
Advocates for complainant.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

ORDER

25.04.2024

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1. This application has been filed by the applicant under Section 438 Cr.P.C. for grant of anticipatory bail in case FIR No.601/2023 dated 10.12.2023 under Sections 323/376/506 IPC, registered at PS: Sagar Pur. By order dated 22.12.2023, this Court had granted interim protection to the applicant against any coercive action, subject to the applicant joining investigation as and when directed by the Investigating Officer and fully co-operating therein. Contention of the learned counsel for the applicant was recorded in the order that the FIR has been lodged with *malafide* intent to extort money from the applicant, as complainant and the applicant are related to each other and the complaint emanates out of a civil property dispute between them.



2. Status report on behalf of the State is handed over in Court by the learned APP and is taken on record.
3. As per the prosecution case, on 10.12.2023, a PCR call was received informing that the complainant had been raped 15 days ago by the husband of her sister-in-law, the applicant herein. The Investigating Officer entrusted with the case investigated into the matter after contacting the complainant. Complainant stated that she was 30 years of age and on 06.11.2023, she was raped at her in-laws' house by the husband of her sister-in-law. Medical examination of the victim was conducted at DDU Hospital, Hari Nagar and her statement was recorded, wherein she stated that her marriage was solemnized on 06.02.2023 and her husband was currently posted in Jammu. Her mother-in-law expired on 07.10.2023 and she came to her in-laws' house on 05.11.2023 to perform certain rituals. After all the relatives left and the rituals were over, on 06.11.2023, at about 07:00PM, when she went to her bedroom located on the first floor of the house to take rest and other family members were on the ground floor, accused came to her room and raped her. She shouted loudly but no one came to help her. She narrated the entire incident later to her husband and the sister-in-law but they completely disbelieved her. Thereafter, she went to her parental house. On the Deepawali day, when the prosecutrix visited her in-laws' house, she was shown a video recording the incident of rape by her husband, who threatened her that if she disclosed the incident to anyone, he would post the video on the social media and show the same to her parents. Prosecutrix belongs to a poor family and for the sake of saving her marriage, she went to Jammu and did not reveal anything to anyone. However, later she narrated the incident to her sister and aunt and reported the crime to the Police.



4. It is further stated in the status report that applicant/accused was called to join investigation, which he did. His potency test has been conducted at DDU Hospital but subsequently, he switched off his phone, locked the house and absconded. Statement of the prosecutrix was recorded on 12.12.2023 under Section 164 Cr.P.C. After getting interim protection from this Court on 22.12.2023, accused has joined investigation and his interrogation report was prepared on 25.12.2023. He again joined investigation on 27.12.2023 and his passport and the mobile phone allegedly containing the objectionable video were seized through a seizure memo. On 27.12.2023, husband of the prosecutrix also joined investigation and blamed his wife for filing of false case, as he had transferred his property in his sister's name. His mobile phone has also been seized. On 31.12.2023, sister-in-law of the prosecutrix was interrogated. Mobile phone of the applicant and the husband of the complainant have been sent for forensic examination to FSL, Rohini.

5. It is stated that during investigation, on 29.12.2023, notice was served on the prosecutrix to join investigation but she did not join. On 04.01.2024, Constable Anil was deputed to serve the notice again on the complainant and her father but on reaching their house, uncle of the prosecutrix misbehaved with Ct. Anil and threatened to file a complaint against the IO and the process server and a GD entry No. 118A has been lodged in this regard on 04.01.2024. On 20.01.2024, Inspector Neeraj Kumar and SI Priya again visited the house of the complainant but she flatly refused to join investigation. Even on 26.02.2024, prosecutrix did not come. On 01.03.2024, when the matter was listed before this Court, after assurance given to the Court, prosecutrix joined investigation on 14.04.2024 and was



examined in a question-answer form.

6. Learned counsel for the applicant submits that the applicant is innocent and the allegations in the FIR are completely false, vexatious and were levelled by the complainant with an intent to extort money from the applicant. The genesis of the FIR is, in fact, a property dispute in the family. Father-in-law and mother-in-law of the applicant died intestate on 08.09.2013 and 07.10.2023, respectively leaving behind one son, husband of the prosecutrix and two daughters as legal heirs, of which is one married to the applicant. After their death, the properties, both movable and immovable devolved on the legal heirs. On 06.11.2023, in order to give her share to the wife of the applicant, husband of the prosecutrix and his other sister executed a relinquishment deed in respect of one property located at Kailashpuri, Extension Palam. Prosecutrix did not accept this and the disputes started between her and her husband and to settle scores with the wife of the applicant, she lodged a false complaint, leading to the registration of this FIR. It is urged that applicant has no criminal antecedents. He has deep roots in the society and there is no chance of his absconding or fleeing from justice or tampering with evidence. Applicant is a God-fearing man and has not committed an offence and has promptly handed over his mobile phone allegedly containing an objectionable video to the Police during investigation. Arrest will cast a stigma on him and will destroy not only his life but the life of his family members.

7. Learned APP for the State relying upon the status report and on instructions from the Investigating officer, who is present in Court, states that applicant has joined investigation and is co-operating therein. His mobile phone has been seized and sent for forensic examination and he is no



longer required for custodial interrogation. Significantly, it is submitted that during investigation, Police has recovered evidence to show that prosecutrix has been in communication with a third person wherein allegedly a conspiracy is being hatched on how to implicate the applicant.

8. Heard learned counsel for the applicant, learned APP for the State and Mr. Tripathi, learned counsel for the complainant.

9. Investigation is ongoing in the matter. It is the case of the State that applicant has joined investigation and has been appearing before the IO, as and when called for. It is also undisputed that applicant is co-operating and has handed over his mobile phone which has been sent for forensic examination. The allegations levelled against him would be a matter of trial. It is further stated by the learned APP, on instructions from the IO, that custodial interrogation of the applicant is not required and there are no allegations that the applicant is a flight risk or has made any attempt to tamper with evidence or threaten the prosecutrix or any other witness involved in the case while being on interim protection granted by this Court. Instead, there are serious allegations against the prosecutrix of joining investigation after several reminders and not co-operating including misbehaviour by her family with the IO and the process server, to obstruct the process of investigation.

10. In view of these facts and circumstances, interim order dated 22.12.2023 is made absolute. It is directed that in the event of arrest, applicant shall be released on bail, subject to his furnishing a personal bond in the sum of Rs.30,000/- with one surety of like amount to the satisfaction of the Investigating/Arresting Officer and further subject to the following conditions:



- i. Applicant shall not leave the country without prior permission of the Trial Court;
 - ii. He shall furnish his mobile number to the Investigating Officer and keep the same active at all times and shall not change the mobile number without prior intimation to the Investigating Officer and the Trial Court;
 - iii. He shall appear before the Trial Court on each and every date of hearing;
 - iv. He shall not, directly or indirectly, indulge in any illegal activity or make any inducement, threat or promise to any person associated with the case including the prosecutrix; and
 - v. He shall furnish his current residential address to the Investigating Officer and intimate any change in the same to the Investigating Officer and the Trial Court by way of an affidavit.
11. The passport of the applicant, which was seized by the Investigating Officer, shall be released to him under acknowledgment.
12. Bail application stands disposed of in the aforesaid terms making it clear that this Court has not expressed any opinion on the merits of the case. Pending application also stands disposed of.

JYOTI SINGH, J

APRIL 25, 2024/DU/shivam