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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **BAIL APPLN. 3287/2024**

RAJ KUMAR

.....Applicant

Through: Mr. Priyam Pandey & Ms.
Jyoti Miohna, Advs.

versus

STATE NCT OF DELHI

.....Respondent

Through: Mr. N.K. Chahar, APP for
the State.
SI Divya, PS Sonia Vihar
Victim in person.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

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11.09.2024

CRL.M.A. 27462/2024 (*exemption from filing certified copy of
annexures and deficient copies of dim annexures*)

1. Exemption allowed, subject to all just exceptions.
2. The application stands disposed of.

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3. The present application is filed seeking pre-arrest bail in FIR No. 252/2024 dated 06.08.2024, registered at Police Station Sonia Vihar for offences under Sections 376/506 of the Indian Penal Code, 1860 (IPC).

4. The FIR was registered based on allegations that the prosecutrix, who was employed at the factory operated by the applicant, was subjected to sexual assault by him. The prosecutrix alleged that the first instance of sexual assault occurred in September, 2021 within the factory premises, and that over the next two years, she was repeatedly assaulted by the applicant, who also threatened to viral a video he had purportedly made of the alleged incidents.

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5. The learned counsel for the applicant submits that the applicant has been falsely implicated in the present case. He submits that the prosecutrix was in consensual physical relations with the applicant and the series of complaints were registered in the last two years by the applicant as well as by the prosecutrix. He submits that on an earlier occasion, the prosecutrix and the applicant had also executed a settlement agreement on 19.04.2022.

6. He submits that the applicant had also given a complaint on 11.07.2023 against the prosecutrix when the applicant was apprehending that he would be falsely implicated by her. He submits that the prosecutrix, as a counterblast, gave a complaint on 20.07.2023 to the SHO, Police Station Sonia Vihar, where she alleged that she was sexually assaulted for the first time in a hotel, whereas in the FIR, the prosecutrix has alleged that she was assaulted for the first time within the premises of the factory.

7. The learned Additional Public Prosecutor for the State vehemently opposes the present application. He argues that the prosecutrix has been subjected to repeated sexual assault by the applicant, who, being her employer, exploited his position of authority and control.

8. He submits that another FIR being FIR No. 363/2023 was registered at the instance of the brother of the prosecutrix on an allegation that the applicant had abducted him and threatened him. He submits that various compromising photographs were also found to have been circulated by the applicant.

9. It is to be kept in mind that the investigation is currently at a nascent stage. The considerations governing the grant of pre-arrest bail are materially different than those to be considered



while adjudicating the application for grant of regular bail, as in the latter case, the accused is already under arrest and substantial investigation is carried out by the investigating agency.

10. It is trite law that the power to grant a pre-arrest bail under Section 438 of the CrPC is extraordinary in nature and is to be exercised sparingly. Thus, pre-arrest bail cannot be granted in a routine manner. The Hon'ble Apex Court, in the case of ***State of A.P. v. Bimal Krishna Kundu*** : (1997) 8 SCC 104, held as under:

“8. A three-Judge Bench of this Court has stated in Pokar Ram v. State of Rajasthan [(1985) 2 SCC 597 : 1985 SCC (Cri) 297 : AIR 1985 SC 969] : (SCC p. 600, para 5)

“5. Relevant considerations governing the court's decision in granting anticipatory bail under Section 438 are materially different from those when an application for bail by a person who is arrested in the course of investigation as also by a person who is convicted and his appeal is pending before the higher court and bail is sought during the pendency of the appeal.”

9. Similar observations have been made by us in a recent judgment in State v. Anil Sharma [(1997) 7 SCC 187 : 1997 SCC (Cri) 1039 : JT (1997) 7 SC 651] : (SCC pp. 189-90, para 8)

“The consideration which should weigh with the Court while dealing with a request for anticipatory bail need not be the same as for an application to release on bail after arrest.”

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12. We are strongly of the opinion that this is not a case for exercising the discretion under Section 438 in favour of granting anticipatory bail to the respondents. It is disquieting that implications of arming the respondents, when they are pitted against this sort of allegations involving well-orchestrated conspiracy, with a pre-arrest bail order, though subject to some conditions, have not been taken into account by the learned Single Judge. We have



absolutely no doubt that if the respondents were equipped with such an order before they are interrogated by the police it would greatly harm the investigation and would impede the prospects of unearthing all the ramifications involved in the conspiracy. Public interest also would suffer as a consequence. Having apprised himself of the nature and seriousness of the criminal conspiracy and the adverse impact of it on “the career of millions of students”, learned Single Judge should not have persuaded himself to exercise the discretion which Parliament had very thoughtfully conferred on the Sessions Judges and the High Courts through Section 438 of the Code, by favouring the respondents with such a pre-arrest bail order.”

11. It is settled law that the custodial interrogation is qualitatively more elicitation oriented than questioning a suspect who is well ensconced with a favourable order under Section 438 of the CrPC [*State v. Anil Sharma : (1997) 7 SCC 187*]. Granting pre-arrest bail to the applicant would undoubtedly impede further investigation. An order of pre-arrest bail cannot be granted in a routine manner so as to allow the applicant to use the same as a shield.

12. It is not disputed that the applicant was the prosecutrix's employer and was already married and still established physical relations with the prosecutrix. The applicant admittedly was in a position of control and dominance over the prosecutrix, who is stated to be belonging to a humble background.

13. The allegations made against the applicant are of a grave and serious nature. Despite being married, the applicant engaged in a physical relationship with the prosecutrix, who is stated to be belonging from a humble background.

14. The statement of the prosecutrix was recorded in the present FIR, where she had clarified that in a complaint given on an earlier occasion, she has mentioned that she was subjected to



sexual assault for the first time in a hotel and the same complaint was written by an Advocate. She has also admitted that on an earlier occasion she had entered into a settlement on being pressurized by the wife of the applicant. She has further alleged that even after the settlement, the applicant continued to subject her to sexual assault.

15. Certain photographs have been filed by the applicant along with the present application to contend that the applicant and the prosecutrix were in a happy relationship.

16. I have also perused the case diary. It is evident that certain compromising photographs were collected during the investigation, allegedly circulated to further humiliate and control the prosecutrix. In cases involving such serious accusations, it is imperative that law enforcement should be given a free hand and little play in the joint to investigate. Granting pre-arrest bail in this scenario could potentially hinder the investigation, as it might be used by the accused as a shield to evade justice.

17. In light of the above considerations, the present application is dismissed. The dismissal of this application serves as a reminder that the law does not and should not favour those who misuse their authority to exploit others.

AMIT MAHAJAN, J

SEPTEMBER 11, 2024/“SK”