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

+ **BAIL APPLN. 1155/2025 & CRL.M.A. 8812/2025**

GAURAV BHATTApplicant

Through: Ms. Payal and Mr.
Abhishek Bhaskar, Advs.

versus

STATE NCT OF DELHI AND ANRRespondents

Through: Mr. Ajay Vikram Singh,
APP for the State with SI
Ankita Singh, PS
Safdarjung Enclave.
Mr. Raj Kumar, Adv. for
R-2

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

% **20.05.2025**

1. The present application is filed seeking pre-arrest bail in FIR No. 78/2025 dated 06.02.2025, registered at Police Station Safdarjung Enclave for the offence under Section 64(2)(f) of the Bharatiya Nyaya Sanhita, 2023.
2. The FIR was registered on a complaint given by the prosecutrix alleging that the applicant had called her at his home address at around 1 am. It is alleged that thereafter the applicant despite the protests made by the prosecutrix, forcefully established sexual relations with her. It is alleged that when the prosecutrix tried to contact the applicant on the following day, the applicant misbehaved with her and also stated that the prosecutrix was trying to blackmail him for money.
3. The learned counsel for the applicant submits that the



applicant has been falsely implicated in the present case. He submits that the parties were known to each other and that the intercourse between the applicant and the prosecutrix was consensual. He relies upon certain chats between the parties pertaining to the said night, and submits that the prosecutrix had gone to the applicant's house of her own volition.

4. He submits that the applicant had stated that he was going to sleep and that he was drunk despite which the prosecutrix went to meet the applicant. He submits that the same in itself demonstrates that the prosecutrix had gone to the house of the applicant of her own accord, and submits that the intercourse between the parties was consensual. He submits that the chats further demonstrate that the motive imputed on the applicant was without any merit and submits that the applicant is innocent.

5. *Per contra*, the learned Additional Public Prosecutor for the State vehemently opposes the grant of any relief to the applicant. He submits that the prosecutrix, in unequivocal terms, had stated that she was not interested in engaging in any physical relationship with the applicant. He submits that nothing on the record suggests that the prosecutrix had gone to the house of the applicant with the intention of engaging in any physical relationship with the applicant. He submits that merely because the prosecutrix had gone to the house of the applicant at night does not translate to mean that the prosecutrix had given her consent to engage in any physical relationship with the applicant. He submits that the investigation is at a nascent stage and submits that the present applicant be dismissed.

6. I have heard the counsels and perused the material on



record.

7. It is trite law that the power to grant a pre-arrest bail 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 are 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.”

8. In the present case, it is alleged that the applicant forcefully established sexual relations with the prosecutrix. This Court has perused the case diary and transcripts of the admitted chats between the parties. From a bare perusal of the same, while it appears that the prosecutrix went to the house of the applicant of her own volition, however, the same does not *prima facie* indicate that the prosecutrix had given her consent for any physical relations with the applicant. Further, the allegations against the applicant, at this stage, is one of forcefully engaging in sexual relations with the prosecutrix. The allegations, thus, are serious in nature.

9. At this stage, it does not appear that the applicant has been falsely implicated in the present case with an intention to injure or humiliate him. The material presented by the prosecution establishes a *prima facie* involvement of the applicant. Granting pre-arrest bail to the applicants would undoubtedly impede further investigation.

10. It is also 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.

11. Considering the above, and the nature of the offence, no



ground for grant of pre-arrest bail to the applicant is made out.

12. The present application is accordingly dismissed.

13. It is clarified that any observations made in the present order are for the purpose of deciding the present bail application and should not influence the outcome of the trial and also not be taken as an expression of opinion on the merits of the case.

AMIT MAHAJAN, J

MAY 20, 2025