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

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Date of Decision: 17.01.2025+ **BAIL APPLN. 4091/2024 & CRL.M.A. 33727/2024****SUDHIR KUMAR**

.....Petitioner

Through: Mr. Sumit Kumar,
Advocate

versus

THE STATE NCT OF DELHI

.....Respondent

Through: Mr. Raj Kumar, APP for
the State**CORAM:****HON'BLE MS. JUSTICE SWARANA KANTA SHARMA****JUDGMENT****SWARANA KANTA SHARMA, J. (ORAL)**

1. The present application under Section 439 of the Code of Criminal Procedure, 1973 (hereafter '*Cr.P.C.*')/Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023 (hereafter '*BNSS*') has been filed on behalf of the applicant seeking grant of regular bail in case arising out of FIR bearing no. 72/2024, for offence punishable under Section 376/506 of Indian Penal Code, 1860 (hereafter '*IPC*'), registered at Police Station Neb Sarai, Delhi.

2. Briefly stated, the facts of the present case, as evident from the



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complaint filed by the complainant, are that she was living in Delhi since 2018 with her children, while her husband was working in Gujarat. She had come in contact with the accused aged about 26 years, through her sister, as he was working in Kuwait with her sister's husband. As alleged, the accused had begun talking to the complainant over the phone and had subsequently enticed her. He had given her ₹3.5 lakhs to enroll in the course, which the complainant had promised to repay after securing a job. Thereafter, the accused had begun blackmailing her, compelling her to comply with his sexual demands. The complainant had complied with whatever the accused used to ask her to do. He allegedly had instructed her to undress during WhatsApp video calls. She has further alleged that at the end of 2023, the accused had come to Delhi had shown her a naked video of hers on his mobile phone, and had forcibly established physical relations with her for two days under the threat of making her videos public. He had also made a video of the complainant in which she was forced to admit having obtained ₹5 lakh from the accused. Later, he had started defaming her by sending the said videos to people in her native village. Later, he had posted her inappropriate video on social media platforms such as Facebook, WhatsApp, and Instagram. On these allegations, the present FIR was registered on 17.01.2024. The complainant was medically examined at AIIMS, Delhi and her statement under Section 164 of Cr.P.C. was recorded. The present accused/applicant was arrested on 20.01.2024.

3. The learned counsel appearing for the accused/applicant argues



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that the allegations leveled by the complainant herein are vague and false. It is argued that it is a case of a long friendly relationship between the accused and the complainant, turning sour due to a dispute over money and, since the complainant was unable to repay the loan she had obtained from the accused, this false complaint has been lodged. In this regard, the learned counsel draws this Court's attention to a copy of a loan agreement, claimed to have been entered into between the accused and the complainant. The learned counsel further states that the applicant has already remained in jail for about one year, the FSL report has not yet been obtained and supplementary chargesheet has not been filed, and the trial is expected to take time to conclude; therefore, bail be granted to the accused.

4. The learned APP for the State, on the other hand, draws the Court's attention to the statement of the complainant recorded under Section 164 of Cr.P.C. It is contended that it is not a case where the complainant is blackmailing the accused but the accused is blackmailing the complainant, as he has captured inappropriate videos of hers. The learned APP further submits that the FSL report in this case is awaited, and the allegations against the accused are very serious; therefore, the present bail application ought to be dismissed.

5. The learned amicus curiae, appearing for the complainant argues that the complainant had trusted the accused, and that trust



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was exploited by him to create inappropriate videos against her consent. It is also contended that the accused not only created such inappropriate videos but also made them public, aggravating the offence in question. The learned amicus also states that the applicant had also manipulated and uploaded pictures of the minor daughter of the prosecutrix on social media/Instagram, further aggravating the matter. She, therefore, argues that the present bail application should be rejected.

6. This Court has **heard** arguments addressed on behalf of both the parties and has perused the material available on record.

7. As evident from a perusal of the statement recorded under Section 164 of Cr.P.C as well as the complaint, it has been alleged by the complainant that she had come in contact with the accused/applicant, who was living in Kuwait, and both of them had developed friendship. The friendship was to the extent that the accused herein had himself given her an amount of ₹3.5 lakhs over a period of time so that she could pursue a course to become a beautician. It is to be noted that the accused herein has not alleged that the complainant had forced him to part with that money or had taken it through any illegal means.

8. The learned counsel for the accused argued before this Court that the complainant was in a consensual relationship with the accused and she had taken loan from him, and since she herself had entered into a consensual relationship with the accused despite being



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married and having children, she cannot accuse the accused of having sexually assaulted her. In the bail application also, it has been repeatedly mentioned that the complainant was working in a massage parlour. This Court, however, is of the view that the mere fact of the complainant working in a massage parlour – absent any evidence of her being engaged in illicit or unlawful activities – cannot be used to undermine or mitigate the seriousness of the alleged offences committed against her. In any case, the factum of her working in a massage parlour was not hidden by her at any point of time and knowing so, the applicant had befriended her and continued his relationship with her.

9. Moreover, while on the one hand, it has been averred on behalf of the accused in the bail application, and also argued before this Court by the learned counsel, that he was in a friendly and consensual relationship with the victim, but on the other, he wants to blame the complainant of having entered into a relationship with him, allegedly consensual, despite being married – totally forgetting that the friendship was mutual, and not unilateral. While the accused now wants to categorize and differentiate this friendship as if imposed on him by the complainant after filing of the present complaint and plead innocence, his own pleadings and arguments reflect to the contrary.

10. Even if the consent for sexual relations had been given at any point of time by the complainant, such consent cannot, in any



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manner, be construed as consent to capture and post her inappropriate videos on social media platforms. Consent to engage in physical relations does not extend to the misuse or exploitation of a person's private moments or their depiction in an inappropriate and derogatory manner. Thus, even if the first episode of the sexual relationship between the complainant and the accused herein had been consensual, the subsequent acts of the accused were clearly rooted in coercion and blackmail. The complainant alleges that while she had put her trust in the accused as they had developed friendship with each other, the accused had started threatening her that in case she will not show her body parts inappropriately to him during the video calls, he will commit suicide and put the blame on her. Once the accused had recorded the complainant's inappropriate videos without her consent, these videos became tools of manipulation and control. The complainant, as per the allegations, was coerced into continuing the relationship and complying with the accused's demands under the threat of having these videos made public. As alleged, the accused used such videos to blackmail the complainant into further compliance, thereby exploiting her vulnerability. Therefore, the subsequent sexual encounters were no longer consensual but were carried out under duress, with the complainant being put in fear of public humiliation and reputational damage.

11. Thus, while the first sexual encounter may have been consensual, the subsequent ones were allegedly based on blackmail, with the accused taking advantage of the videos to exert control over



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the complainant. The accused's actions in preparing the videos and using them to manipulate and sexually exploit the complainant *prima-facie* reflects a strategy of abuse and exploitation, transcending any initial consensual interaction.

12. In view of these allegations, it is evident that the accused's conduct transcended the boundaries of a mere friendship. The relationship between the complainant and the accused cannot be termed as a "friendship simpliciter" wherein financial assistance was extended by one friend to another. Instead, it *prima facie* appears that the accused had exploited this relationship under the guise of a loan transaction. A loan arrangement, even between friends, does not entitle one party to exploit the other's vulnerability or dignity.

13. Further, the assertion made in the bail application that the complainant, "*being a married woman, was mature and intelligent enough to understand the significance and consequences of her actions*" is a specious argument that cannot absolve the accused of the allegations levelled against him. Admittedly, initially both of them had become friends, and the complainant had never hidden from him that she was married and he himself had entered into friendship and relationship with her, sexual or otherwise, and had financially helped her. To now unilaterally blame it on the complainant that since she was already a married woman, it was she who was on the wrong side of law, will be unacceptable. Thus, in this Court's opinion, the attempt to weaponize the complainant's marital



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status and professional background to diminish the gravity of the allegations is unacceptable.

14. The allegations further assume seriousness when the statement recorded under Section 164 of Cr.P.C. also records that the applicant herein, after forcibly on many occasions, sexually assaulting the complainant by blackmailing her on the strength of inappropriate videos and photographs, had gone a step further and had even morphed and used the photograph of the other female family members of the complainant, including the complainant's minor daughter, aged about 13 years, on social media and had written that they indulge in sex trade. The complainant had started receiving unsolicited phone calls from multiple persons as to how much she will charge for having sex for a night. The alleged use of the photograph of the complainant's daughter by the accused has no explanation. Admittedly, a pen drive containing such videos and photographs of the victim as well as the daughter of the victim, which were uploaded by the accused on social media, were handed over to the IO, and the same are matter of investigation.

15. Thus, at this stage, considering the aforesaid facts and circumstances of the case, the gravity and seriousness of the offence, and in view of the fact that material witnesses are yet to be examined before the learned Trial Court, this Court does not find it a fit case for grant of bail.

16. Accordingly, the present bail application stands dismissed



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alongwith pending application.

17. However, the Director, FSL is requested to ensure that the FSL report in this case is prepared and handed over to the I.O. at the earliest since the accused is in judicial custody, lest the trial is delayed due to non-availability of the FSL report. The I.O. of the case shall ensure that a copy of this order is forwarded to the Director, FSL.

18. Nothing expressed hereinabove shall tantamount to an expression of opinion on merits of the case.

19. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

JANUARY 17, 2025/ns