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

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*Reserved on: October 10, 2023**Decided on: October 20, 2023*+ **BAIL APPLN. 2923/2023****SUSHANT KUMAR****..... Petitioner**

**Through: Mr. Sanjeev Kr. Jha,
Mr. Tribindh Kumar,
Mr. Subodh Kr. Jha,
Advocates.**

V**THE STATE****..... Respondent**

**Through: Mr. Utkarsh, APP for State
with SI Neelu, P.S. Binda
Pur.
Mr. Lal Singh Thakur,
Mr. Anurag Sharma,
Mr. Rachit, Advocates for
prosecutrix.**

CORAM**HON'BLE DR. JUSTICE SUDHIR KUMAR JAIN****J U D G M E N T**

1. The present bail application is filed under section 438 of the Code of Criminal Procedure, 1973 (hereinafter referred to as “**the Code**”) read with section 482 of the Code on behalf of the petitioner Sushant Kumar for grant of anticipatory bail in FIR bearing no.0438/2023 dated 24.07.2023 registered under section 376 of the



Indian Penal Code, 1860 (hereinafter referred to as “IPC”) at P.S. Binda Pur.

2. The present FIR was got registered on the basis of complaint made by the complainant/prosecutrix wherein she stated that in July 2022, her father and father of the petitioner/Sushant Kumar had talked about the engagement of the prosecutrix with the petitioner. She got engaged to the petitioner on 05.12.2022 at Atithi Hotel, Bakhtiyarpur, Bihar in the presence of 75-100 relatives. Thereafter, the family members of the petitioner started to demand dowry from her family. She further stated that her family had already given Rs. 3 lakhs in cash at the time of the engagement and Rs.2 lakhs had been spent in the engagement. On 14.02.2023, the petitioner came to her house and tried to get physical with her but she denied. Thereafter, on 15.03.2023, the petitioner again came to her house to stay there for 10 days and at that time, she was ill and the petitioner took advantage of the same and got physical with her twice. He told her not to tell anyone about the incident as he is her husband now. When the petitioner left her house on 23.03.2023, her father gave Rs. 3 lakhs in cash to the petitioner because the father of the petitioner had put



pressure on him for the same. When the date of their marriage was fixed, the petitioner's father demanded Rs. 10 lakhs from her father. Her father told the petitioner's father that he does not have the capacity to give such amount. The petitioner started to avoid her and refused to marry her. The petitioner's father told her father to look for someone else if they cannot give the demanded amount as dowry. She alleged that the petitioner made physical relations with her on the false pretext of marrying her.

3. During investigation, the statement of the prosecutrix was recorded under section 164 of the Code wherein she repeated the allegations as mentioned in the FIR. The investigation is pending and the charge-sheet has not been filed.

4. The petitioner filed an anticipatory bail application bearing no. 1739/2023, which was dismissed vide order dated 08.08.2023 passed by the court of Sh. R.L. Meena, ASJ-05, South West, Dwarka Courts, New Delhi. The relevant portion of the order dated 08.08.2023 is reproduced as under:-

After having gone through the submissions advanced by both the parties particularly serious allegations against the applicant and applicant has not joined the investigation despite



several efforts made by the IO, therefore, at this stage, I am not inclined to grant anticipatory bail to the accused/applicant.

Before parting this order it is to be note here that I have gone through the citations referred by counsel for the applicant. The facts and circumstances of the said referred case are not applicable up on the facts and circumstance of this case.

Accordingly, bail application is dismissed.

5. The petitioner sought the grant of anticipatory bail on the grounds that the present FIR is the outcome of the calling-off of the proposed marriage between the petitioner and the prosecutrix. The allegations of the prosecutrix as stated in the present FIR are vague as she has not mentioned the date of occurrence of the alleged offence. There is an unexplained delay of about 05 months in lodging of the present FIR. The petitioner has clean antecedents and no prior investigation pertaining to any offence is pending against him. The petitioner is ready to submit himself to any condition imposed by this Court. The petitioner is an employee of the Central Government and there is no likelihood of him fleeing away, evading the trial, tampering with the evidence or threatening the witnesses. The counsel for the petitioner also raised other grounds and prayed that the petitioner be granted anticipatory bail.



6. The Additional Public Prosecutor for the respondent/State filed a Status Report wherein it is stated that the petitioner has not joined the investigation yet. The police officials visited his residential address as well as his office address but the petitioner was not found at either place. Notice was served and intimation letter was also served to his Senior Officer. The Investigating Officer got NBW issued against the petitioner and the same was served by the Investigating Officer at the residential address of the petitioner. The first anticipatory bail application filed by the petitioner was dismissed by the court of Ld. ASJ-05, South West, Dwarka Courts. The petitioner may dissuade the prosecutrix. The Additional Public Prosecutor opposed the grant of anticipatory bail to the petitioner.

7. The counsel for the petitioner argued that the marriage between the petitioner and the prosecutrix was called-off due to the reason that the prosecutrix and her family did not disclose the fact that the prosecutrix was suffering from various medical ailments such as frequent attacks of panic/anxiety, stress, migraine, photophobia and phonophobia. The present FIR was lodged as an attempt to ruin the career of the petitioner who is a government employee working



with the railways due to the reason that the marriage between the petitioner and the prosecutrix was called-off by the petitioner's father. The delay of about five months in lodging the present FIR has not been explained by the prosecutrix. The allegations as mentioned in the FIR do not disclose that the petitioner did not have any intention to marry the prosecutrix and made false promise of marriage from the very beginning and hence, section 376 IPC is not attracted in the present case. It is a settled law that if a relationship does not work out, the same cannot be a ground for lodging an FIR for the offence punishable under section 376 IPC. The petitioner, being a government employee, would suffer irreparable loss and his career would be ruined if he is incarcerated in a false and frivolous case. The petitioner has roots in the society and would not flee from justice. The counsel for the petitioner prayed that the petitioner be granted anticipatory bail.

8. It is reflecting that the marriage of the petitioner with the prosecutrix was fixed in July 2022 and their engagement ceremony was performed on 05.12.2022 at Atithi Hotel, Bakhtiyarpur, Bihar. Subsequently, the differences stated to have been arisen between the



respective families of the petitioner and the prosecutrix on account of alleged dowry demands. The petitioner came to Delhi on 14.02.2023 and tried to establish physical relation with the prosecutrix. The prosecutrix is stated to have been suffering from various ailments as referred by the counsel for the petitioner during arguments.

9. The petitioner again came to Delhi on 15.03.2023 and stayed at the house of the prosecutrix for 10 days. The prosecutrix was not having good health and allegedly the petitioner made physical relations with the prosecutrix on two occasions. However, the prosecutrix did not disclose the said fact to any member of her family. The prime allegation which is reflecting from the FIR and the statement of the prosecutrix under section 164 of the Code is that the petitioner had physical relations with the prosecutrix on the pretext of marriage. The first alleged incident had happened in the month of March 2023 but the FIR was got registered in the month of July 2023. The prosecutrix did not disclose the alleged forcible sexual relation with her by the petitioner for more than 04 months. The petitioner and the prosecutrix were known to each other. Although the prosecutrix has improved her version in the statement under section 164 of the Code, the issue whether the petitioner had physical relations with the prosecutrix with



her consent or not is a matter of trial and cannot be decided without evidence. The petitioner is stated to be a Government employee. There is no risk that the petitioner would flee from the trial.

10. After considering all facts, in case of arrest the petitioner is admitted to bail on furnishing a personal bond in the sum of Rs. 30,000/- (Rupees Thirty Thousand Only) with one surety of the like amount to the satisfaction of the concerned SHO/Investigating Officer subject to the following conditions:-

i) That the petitioner shall not tamper with the evidence or extend any threat to the witnesses;

ii) That the petitioner shall not leave the country without prior permission of the concerned trial court.

iii) That the petitioner shall join and participate in the investigation as and when directed by the concerned Investigating Officer.

11. The present bail application is accordingly disposed of.

12. It is made clear that the observations made in this judgment shall not affect the merit of the case.

**DR. SUDHIR KUMAR JAIN
(JUDGE)**

OCTOBER 20, 2023

sk/am