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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ BAIL APPLN. 3618/2023, CRL.M.(BAIL) 1511/2023, CRL.M.A.
32803/2023, CRL.M.A. 32852/2023

FAIZY KHAN Applicant

Through: Ms. Warisha Farasat, Ms. Natasha
and Mr. Aman Naqvi, Advocates

Versus

THE STATE GOVT OF NCT OF DELHI) Respondent

Through: Ms. Meenakshi Dahiya, APP for the
State with Insp. Mr. Naresh Kumar,
SI Radha Kanwar, PS Maurya
Enclave
Mr. Mohit Chaudhary, Mr. Kunal,
Mr. Anubhav Singhal and Ms.
Srishti Bajpai, Advocates for
complainant

CORAM:
HON'BLE MR. JUSTICE SAURABH BANERJEE

% **ORDER**
01.12.2023

1. The present bail application has been preferred by the applicant under Section 438 of the Code of the Criminal Procedure, 1973 seeking anticipatory bail in FIR No.582/2023 dated 28.10.2023 registered under Section 376 of the Indian Penal Code, 1860 and Section 6 of The Protection of Children from Sexual Offences Act, 2012 at PS Maurya Enclave, Delhi.

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2. As per FIR, the complainant/ prosecutrix and the applicant knew each other from the year 2012, whence they were studying at the same school. Thereafter, the applicant moved to Delhi for his Bachelors Degree, as per prosecutrix in June, 2015, the applicant had forced sexual relation with her under the pretext of marriage whence she was a minor. Furthermore, the applicant had a long-standing relationship with the prosecutrix till the year 2021, whence the marriage of the applicant and the prosecutrix could not go through, because according to the prosecutrix the applicant and his family members were persuading her to change her religion for the said marriage.

3. Learned counsel for the applicant seeking grant of anticipatory bail to the applicant submits that the present is case of relationship gone sour which is apparent from the printouts of the various e-mails sent by her to the applicant from time to time. She also submits that the applicant had all the intentions to marry the prosecutrix but since she was cheating on him with some other person which can be seen from the CDR of the prosecutrix as the applicant and the prosecutrix were having a same telecom account with two separate numbers, whence, he broke off the marriage. In any case, the factum of his intentions to marry the complainant can very well be affirmed from the contents of the FIR that the applicant introduced her to his family members. She further submits that the applicant has voluntarily joined investigation three times.

4. Notice was issued and Status Report was called for.

5. The learned APP for the State relying upon the Status Report affirms that the applicant has since joined the investigation, but she objects to the grant of anticipatory bail to the applicant considering the



nature and gravity of the offence and the factum that the offences alleged being continuing offences, custodial interrogation of the applicant being required.

6. Learned counsel for the prosecutrix, relying upon *Gopal Goyal vs State of NCT of Delhi* 2012 SCC OnLine Del 4277 submits that the present application is not supported by the affidavit of the applicant but is of some unknown person claiming to be the grandfather of the applicant herein and thus opposes the grant of the bail to the applicant. Learned counsel for the prosecutrix further submits that all the e-mails entailed by the applicant are forged and not genuine and he is not aware of them. He also submits that the applicant has disclosed personal data of the prosecutrix and thus bail should not be granted to the applicant.

7. This Court has heard the learned counsel for the parties and perused all the documents on record along-with judgments cited by them.

8. First and foremost, prior to proceeding to dwell into the merits of the case, this Court finds that few documents relied upon by the applicant show that the name of complainant/ victim has *not been* duly redacted. Thus, in lieu of the dicta of the Hon'ble Supreme Court *Nipun Saxena vs. Union of India* (2019) 2 SCC 703 and of this Court in *Saleem vs The State of NCT of Delhi & Anr.* 2023:DHC:2622 and the Delhi High Court Practise Directions dated 04.10.2023 bearing No.101/Rules/DHC, the learned counsel for the applicant is called upon to pursue with the Registry of this Court for taking appropriate steps in curing the said defects within a period of one week.

9. The Registry is also cautioned to keep in mind the aforesaid dicta's in letter and spirit. Needless to say, the same has to be kept in mind when
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any litigation of the present nature is being filed by any person before this Court.

10. Adverting to the facts involved herein, upon a perusal of the contents of the FIR, *prima facie*, it appears that the complainant was indeed in a relationship with the applicant for long period of time from 2015 till 2023, i.e. the date of registration of the present FIR. Not only the aforesaid, the complainant had met and was aware of the family members of the applicant, so much so, there were talks of marriage, though what happened after that is a matter of trail. Furthermore, for the time being, this Court finds that there was/ is indeed something more than what meets the eye *inter-se* them. The same is also evident from the factum that the complainant chose to sit silent and not allege anything of the kind she has chosen to do so in her complaint since 2015, which has resulted in registration of the present FIR.

11. Considering the aforesaid, especially the contents of the present FIR, without specifically adverting to the veracity and/ or correctness of the accompanying documents filed by the applicant alongwith the present application at this stage, though the applicant has already filed a certificate under Section 65B of The Evidence Act, 1872, as well as the factum that the complainant has not disputed the e-mail ID mentioned therein but has certainly doubted the manner therein, they are factors sufficient to be taken into consideration for granting anticipatory bail to the applicant at this stage. It is also a matter of fact that the applicant and the complainant were having separate mobile numbers from the same Airtel account.

12. It is not in dispute that the applicant has since submitted himself to join the investigation twice as the same has been affirmed by the learned



APP for the State upon instructions from the IO.

13. Qua the non-filing of the accompanying affidavit of the applicant at the stage of seeking anticipatory bail, all that this Court is required to see is the genuineness and correctness of the accompanying affidavit coupled with the conduct of the applicant. Two relevant factors for consideration qua the above at this stage in the present proceedings are that not only the present application is accompanied with the affidavit of the grandfather of the applicant but the same specifically finds mention in the application itself and the applicant has himself made efforts for joining investigation. Considering the aforesaid circumstances and in any event, calling for filing of the affidavit of the applicant at this stage would, in the opinion of this Court, be too hyper-technical and is thus not needed in bail jurisprudence. Moreover, there is no bar qua maintainability of the present application.

14. As such, reliance upon *Gopal Goyal (supra)* is misplaced as the applicant therein was not willingly cooperating with the investigation and was not traceable. The facts, admittedly, in the present proceedings, are starkingly different.

15. Taking into consideration the facts involved and the surrounding circumstances coupled with the aforesaid factors, the applicant is granted anticipatory bail in FIR No.582/2023 dated 28.10.2023 registered under Section 376 IPC and Section 6 POCSO at PS Maurya Enclave, Delhi. In the event of his arrest, the applicant be released after furnishing a personal bond in the sum of Rs.1,00,000/- (*One Lakh Only*) alongwith one surety of the like amount by a family member/ friend having no criminal case pending against them, subject to the satisfaction of the learned Trial Court,

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and further subject to the following conditions:

- i. Applicant shall not leave his place of residence (Agra, Uttar Pradesh) without prior permission of this Court and shall ordinarily reside at the address as per the Trial Court records. If he so wishes to change his residential address, he shall immediately intimate about the same to the I.O. by way of an affidavit.
- ii. Applicant shall surrender his Passport to the I.O., within three days. If he does not possess the same, he shall file an affidavit before the I.O. to that effect within the stipulated time.
- iii. Applicant shall appear before the Court as and when the matter is taken up for hearing, unless leave of every such absence is obtained from the Court, prior to such absence.
- iv. Applicant shall join investigation as and when called by the I.O. concerned. He shall not obstruct or hamper with the police investigation and shall not play mischief with the evidence collected or yet to be collected by the Police.
- v. Applicant shall provide all his mobile numbers to the I.O. concerned which shall be kept in working condition at all times and shall not switch off or change the mobile number without prior intimation to the I.O. concerned. The mobile location be kept on at all times.
- vi. Applicant shall report to the local Police Station (Agra, Uttar Pradesh). Once in the first week of the every month unless leave of every such absence is obtained from the learned Trial Court.
- vii. Applicant shall not indulge in any criminal activity and shall not communicate with or come in contact with any of the prosecution



witnesses, the victim or any member of the victim's family or tamper with the evidence of the case or try to dissuade them from disclosing such facts to the Court or to any police officials.

16. Copy of the present order be sent to the concerned S.H.O. for necessary information and compliance thereof.

17. Needless to mention, observations made, if any, are purely for the purposes of adjudication of present application and shall not be construed as on the merits on the matter.

SAURABH BANERJEE, J

DECEMBER 1, 2023/So