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

+ **BAIL APPLN. 2813/2020**

KAPIL GUPTA

..... Petitioner

Through Mr. Vikas Pahwa, Sr. Adv. with Mr.
Simran Jyot Singh Khandpur, Mr.
Varun Singh, Mr. Kamlesh Anand,
Mr. Sumer Boparai, Ms. Ruchika
Wadhawn and Ms. Raavi Sharma,
Adv.

versus

STATE

..... Respondent

Through Mr. P. L. Sharma, APP for State.
SI Nazma, PS Mehrauli.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

ORDER

% **23.09.2020**

The hearing has been conducted through video conferencing.

CrI. M.A. 13171/2020 (Exemption)

1. Allowed, subject to all just exceptions.
2. Application is disposed of.

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3. The present petition has been filed by the petitioner under Section 438 Cr.P.C. read with Section 482 Cr.P.C. for grant of bail in case FIR No.569/2020, registered under Sections 376 IPC at Police Station, Mehrauli.
4. Notice issued.
5. Learned APP accepts notice on behalf of state.
6. With the consent of counsel for the parties, the present petition is

taken up for final disposal.

7. Case of the prosecution as per complaint of the prosecutrix is that petitioner and complainant both were completely unknown and stranger to each other till 24.08.2020. Prosecutrix is a personal trainer by profession. She had an accident 5 months ago. Her thigh bent and ankle got fractured in accident. Then she was really helpless and financially disturbed then she thought to join a multinational company for future security. She got the number of Delta Electronics owner namely Kapil Gupta. She texted him for job. He replied that he was looking for a hot personal assistant. She said that they could discuss about it. Then petitioner asked her for relationship and she replied that she did not feel comfortable with anyone in first meeting. She said that they would have some coffee. Then petitioner called and asked for wine. She said ok get wine. Petitioner asked her for red or white wine. Then she sent him her location. He came at her place. They were talking normally about profession. Then petitioner gave her two drinks and she was so high, he started removing her clothes. He started punching on her right leg and he raped her. She was helpless and was crying. She was trying to call her neighbours. He raped her with no protection and asked her to open the door, however, her leg was paining like hell. He hit her so many times. She scratched him on chest. She called her neighbour Jasmin. When she came, she saw the petitioner ran away from her house after raping her. Further stated that petitioner asked her for physical relations, she replied in negative, then he removed her clothes and started hitting her and raping her. The said incident is of dated 24.08.2020 and accordingly, she made complaint which culminated into FIR in question.

8. Learned APP has opposed the present petition by stating that presence

of the petitioner at the spot is not in dispute. He admittedly had gone to the house of the complainant with wine bottles and seen pictures as he claimed to have sent by the complainant. He had no business to attend her call and go to a stranger lady at her place after a first conversation. Thus, the allegations are serious against the petitioner, therefore, the petition deserves to be dismissed.

9. Learned senior counsel for petitioner submits that petitioner and complainant both were completely unknown strangers to each other till 24.08.2020. At the first, the petitioner was approached by the complainant through whatsapp message on 24.08.2020 at 12:46 pm. As per the said chat, the complainant got petitioner's number from Naukri.com (an online job portal) and asked whether the petitioner is looking for any '*personal assistant*'. The petitioner answered the question in affirmative. Instead of sending pictures in professional suits/attire, complainant sent her sensuous pictures in bathing suit/bikinis.

10. It is further submitted that chatting between the complainant and petitioner started at 12:46 pm and all these pictures had been sent by complainant herself to a complete stranger on his phone within three minutes i.e. at 12:49 pm. Moreover, the pictures had been shared in an otherwise professional chat purportedly happening for the job of '*Personal Assistant*'. Those ravishing pictures were deliberately shared by the complainant to entice the petitioner so that he might open up and could be put to right use in the trap which lay ahead. The chat which hitherto was between an employer and employee suddenly turned informal and petitioner started moving towards the trap. On the same day, i.e. on 24.08.2020, the complainant and petitioner had a telephonic conversation wherein the

complainant in her sweet, innocent voice invited the petitioner to her flat/house (at Saket) in the evening and she told him that she lives there with her sister, who leaves for her job by 6 pm (Night Shift) and thereafter she is all alone and invited him to come anytime thereafter. The chats continued in a very informal sense, the complainant started sharing her personal details about her past and present, to introduce an emotional angle to the conversation so that petitioner feel more connected and comfortable while moving towards the trap. After making the petitioner comfortable, complainant asked *“if u don’t mind can u get some wine”*, *“it’s been long time ache se chill ni kia maine”* hinted that she was available for a long term relationship and wouldn’t mind love making. Soon all the inhibitions were shed and hitherto normal text messages got mixed with flirtatious, erotic undertones and all the advances by the petitioner in said direction were overly welcomed by the complainant and there was not an iota of any demur and / or any protest.

11. It is further submitted that when the petitioner said that he would come and join the complainant in shower, the complainant instead of seriously reprimanding the petitioner for his attempt, wrote *‘lol’* (a slang for Laugh Out Loud).

12. Learned senior counsel for petitioner further submits that petitioner has been trapped and tricked under a well-designed, meticulously planned and thoroughly woven racket of extortionists. When the petitioner came to know that complainant had lodged FIR in question, he made representations /reply on 30.08.2020 to SHO Police Station Mehrauli and Commissioner of Police, Delhi. However, no action has been taken. Thereafter, on 09.09.2020 petitioner filed a complaint to the Police Station Mehrauli for taking action

against the complainant and her associates for extortion of money. Even in second time, no action has been taken and having no alternative, petitioner filed complaint/petition under Section 156(3) Cr.P.C. on 18.09.2020. The learned Magistrate asked the ATR from the police station and matter is fixed on 07.11.2020 for further proceedings.

13. Learned senior counsel further submitted that during the entire chatting, there is no whisper of any job opening or payment/salary structure or work timings or past job experiences etc; rather surprisingly to the contrary, she shares her bikini pictures by the pool and other seductive pictures in order to allure the petitioner. Once the petitioner was being seduced, the next step to call him at home was easy. The complainant called the petitioner at home and when her demand of Rs.5,00,000/- (Rupees Five Lacs) were not fulfilled, she registered an entirely fabricated, false and concocted case of rape against the petitioner.

14. Learned senior counsel further submits that *modus operandi*, which is prevailing now a days in such kind of cases can be divided into three parts. First - contact random strangers by different modes viz. whatsapp, Facebook, Instagram and other social networking sites; second – if the person responds, means he is interested, then seduce him / her by sending pictures, videos or chatting; third - when the strangers were trapped, call him / her at home and then make videos, level false charges/accusations, intimidate and thereafter demand money.

15. I have gone through the photographs and chats which are annexed with the present petition which seems to be the allurements on the part of the complainant and petitioner got trapped therein, however, without commenting on the merits of the prosecution case, I am of the view that

petitioner deserves protection from this Court. Accordingly, the SHO/IO concerned is directed that in the event of arrest, the petitioner/applicant shall be released on bond on his furnishing a personal bond in the sum of Rs.25,000/-. The petitioner shall cooperate with the investigation and make himself available for interrogation by police officer, as and when required. Petitioner shall not contact /influence prosecutrix and prosecution witnesses.

16. The petition is, accordingly, allowed and disposed of.

17. Though acceptance allurement is not justified but at the same time, allurement advanced for extortion of money is also not acceptable. However, before parting with the present petition and without commenting on the merits of the case which is subject matter of the investigation, learned senior counsel for petitioner has pointed out that FIR shows the name of her neighbour as Jasmin, in fact the said Jasim is Bhawna Thakur who is not a neighbour but a close friend/ accomplice in the crime.

18. In view of above, I hereby direct Commissioner of Police, Delhi to personally look into the matter and see whether the complainant herein and the above mentioned Jasmin are indulged in any other such type of cases, if so, appropriate action may be taken against the culprits. In addition to above, the Commissioner shall call reports from all the police stations of such cases as present one and file a report to this effect within four weeks from today.

19. I further direct that if the Commissioner feels similar type of incident had happened in Delhi in the year 2020, he shall issue standing orders to all the concerned Police Stations that action may be taken as per law, however, without harassing such person/alleged accused therein.

20. For directions, renotify on 17.11.2020.

21. Copy of this order be transmitted to the Commissioner of Police,

Delhi for information and necessary compliance

22. The order be uploaded on the website forthwith.

SURESH KUMAR KAIT, J

SEPTEMBER 23, 2020

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