

SH. SUNIL GUPTA
अतिरिक्त सत्र न्यायाधीश
Addl. Sessions Judge
दक्षिण, दिल्ली
South, Delhi
साकेत, नई दिल्ली
Baket, New Delhi

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Bail Matter 138/2024
State Vs. Gautam Kumar
FIR No. 507/2023
PS Hauz Khas

21.02.2024

Present: Sh. Santosh Kumar, Ld. Addl. PP for State.
Sh. Namit Saxena, Ld. Counsel for applicant alongwith
applicant.

1. Arguments already heard yesterday.
2. It was argued by Ld. Defence counsel that accused was arrested in this false case on 16.12.2023 and that he was released on interim bail for marriage of his sister till 07.02.2024 vide order dated 08.01.2024 of Ld. Predecessor. It was submitted that his interim bail was extended vide order dated 06.02.2024 of Ld. Link ASJ. It was submitted that while he was on interim bail, his services have been terminated by the department as he was behind bars for a period of more than 48 hours. It was submitted that the charge-sheet after completion of investigation has been filed before Ld. ACMM, South on 25.01.2024 and that the matter was fixed there for 04.03.2024 for scrutiny of documents. It was submitted that he has not misused his liberty in any manner whatsoever. It was submitted that the allegations leveled by the complainant were false. It was submitted that the applicant had met the complainant through a dating app *Bumble* and that there was no promise of marriage from his side. It was submitted that no such promise can be expected in relationships which start from such dating apps. It was submitted that the relationship between the parties was



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consensual in nature and that the consent of complainant cannot be termed as having been vitiated on the ground of alleged false promise of marriage on the part of applicant. It was submitted that the complainant had earlier also lodged an FIR No.717/2021 u/s 376/354A/323/506/34 IPC at PS Mehrauli against one Bilal Ahmed. It was submitted that another FIR against same individual was lodged vide FIR No.06/2022 u/s 420/328/376/323 506 IPC, Section 67 IT Act, 2008 and Section 3/5(1) U.P. Prohibition of Unlawful Conversion of Religion Act, 2021. It was submitted that Hon`ble Allahabad High Court vide order dated 12.05.2022 has ordered that no coercive action be taken against Mr. Bilal Ahmed in the FIR registered in U.P. whereas quashing petition has been filed qua the FIR registered in Delhi. It was submitted that bail is the rule and jail is exception. It was submitted that no purpose shall be served by sending him behind the bars. He was ready to abide by any condition to be imposed by this Court. It was submitted that present application was maintainable without him surrendering to custody. Bail has been prayed for on these grounds. He has relied upon following judgments:-

- (a) **Susanta Kumar Samantaray and another Vs. State of Odiha (VIG.), Crl MC No.1483/2023.**
- (b) **Sundeep Kumar Bafna vs. State of Maharashtra (2014) 16 SCC 623.**
- (c) **Jitendra Vs. State of U.P. 2022 SCC Online All 674.**
- (d) **Anil Nirwan Vs. State of Delhi, Bail Appln. 2188/2023**
- (e) **Pramod Suryabhan Pawar Vs. The State of Maharashtra & Aur., Crl. Appeal No. 1165/2019.**
- (f) **Anand Kaushal Vs. State (Govt. of NCT of Delhi) Crl. Rev. P. 1134/2019 & Crl. M.A. 39313/2019 & Crl. M.A. 39314/2019.**



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3. On the other hand, Ld. Addl. PP for State has submitted that bail application was not maintainable in view of judgment of Hon'ble Delhi High Court in **Vijay Singh Vs State NCT of Delhi, Bail application No. 28/2017** wherein it was held that provision of Section 439 Cr.P.C. was restricted to be invoked by the person already "in custody". It was submitted that the application was liable to be dismissed on this ground alone. On merits, it was submitted that allegations against the applicant were serious in nature and that charge-sheet has been filed against him after completion of investigation showing that a prima facie case for commission of alleged offences including offence U/s 376 IPC was made out against him.

4. Complainant on her part had also opposed the bail application. It was submitted by her that she had given her consent for release of applicant on interim bail on 08.01.2024 on the request of his relatives who had assured her that applicant will marry her but he has not done so. It was submitted that the earlier FIRs U/s 376 IPC registered against Bilal Ahmad does not show anything regarding her character. It was submitted that the case against Bilal Ahmad was of *Love Jihad* wherein after registration of FIR under relevant Sections in Delhi, another FIR was registered in U.P when she had sent a complaint to the concerned DGP, U.P. It was submitted that she has agreed for quashing of the FIR registered in Delhi because the accused therein has registered a false case against her in a remote District of U.P and that she did not want to be harassed by appearing on each and every date in that case. It was submitted that there was no exchange of money for quashing of that FIR. It was further submitted that the

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submissions of Ld. Defence Counsel to the effect that there could not have been any promise of marriage because the alleged relationship between them had started through a dating app was wrong . It was submitted that dating apps like *Bumble* are used by people to meet and know each other, and it can't be presumed that their only motive is to engage in casual sex. It was submitted that the applicant had met her through that app and he had made her feel like she was his wife.

5. Ld. Counsel for complainant who had joined through VC at around 11:30 AM had submitted that he was not prepared with arguments as the copy of bail application was not received by him. It was submitted that charge-sheet against applicant has been filed after completion of investigation however, he was yet to get the copy thereof. In the absence of copy of bail application and the charge-sheet, he cannot be expected to adduce arguments. He relied upon the judgment of Hon'ble Delhi High Court in **Saleem Vs. State (NCT of Delhi) 2023 SCC Online Del 2190** and state that the opportunity of being heard to be given to the complainant/prosecutrix should not be a mere formality.

6. In rebuttal, it was submitted by Ld. Defence Counsel that copy of bail application was duly supplied to Ld. Counsel for complainant earlier and same was clear from the order dated 05.02.2024 wherein hearing was adjourned by Ld. Link ASJ on his request to go through the application.

I have considered the submissions from both the sides alongwith



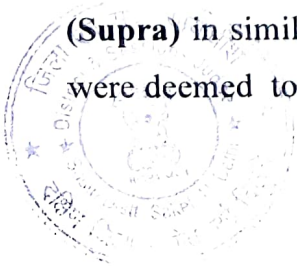
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8. First of all, this Court shall deal with the issue as to whether the bail application was maintainable as admittedly, the applicant was not in custody rather was on interim bail in terms of orders dated 08.01.2024 and 06.02.2024 of Ld. ASJs. Ld. Defence Counsel has relied upon the judgment of Hon'ble Apex Court in **Sundeep Kumar Bafna vs. State of Maharashtra (Supra)** and that of Hon'ble Orissa High Court in **Susanta Kumar Samantaray and another Vs. State of Odisha (VIG.)(Supra)** and has submitted that while the applicant was on interim bail still he was in deemed custody of the Court. On the other hand, Ld. Addl. PP for State has relied upon the judgment of Hon'ble Delhi High Court in **Vijay Singh Vs. State NCT of Delhi (Supra)** and has submitted that application U/s 439 Cr.P.C. can be considered only when the accused was "in custody".

9. Perusal of judgment of Hon'ble Delhi High Court shows that in the same, Hon'ble High Court relied upon the judgment of Hon'ble Apex Court in **Sunita Devi Vs. State of Bihar And Anr. AIR 2005 SC 498**. However, it is to noted that in the judgment of Hon'ble Apex Court in **Sundeep Kumar Bafna (Supra)** has distinguished the judgment of **Sunita Devi of Vs. State of Bihar (Supra)** expressly and it was held that the earlier judgment of **Niranjan Singh Vs. Prabhakar Raja Ram Karote (1980) 2 SCC 559** had laid down the correct law. In these circumstances, this Court is of the view that the judgment of Hon'ble Delhi High Court in **Vijay Singh (Supra)** does not lay down correct law. Hon'ble Orissa High Court in **Susanta Kumar Samantaray and another Vs. State of Odiha (Supra)** in similar facts held that the accused who were on interim bail, were deemed to be in constructive custody of the Court and it was not



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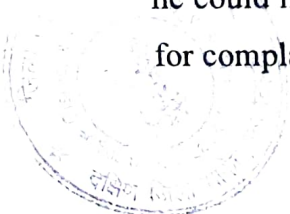
required that they should first surrender for seeking relief of regular bail U/s 439 Cr.P.C.

10. Considering the above discussion, this Court is of the view that there is no bar in entertaining the present bail application.

11. Proceeding further, Ld. Counsel for complainant has stated that he was not in a position to argue the matter in view of the bail application and copy of charge-sheet having not been received by him. He has relied upon the judgment of Hon'ble Delhi High Court in **Saleem Vs. State (NCT of Delhi) (Supra)**. In that case, Hon'ble Delhi High Court held as under:-

“33.4 To obviate any ambiguity, though Section 439(1A) Cr.P.C. makes the “presence of the informant” obligatory at the time of hearing, that is clearly mandated thereby is the right of the victim, whether through the informant or other authorised representative, to be effectively heard in the manner. Necessary, legal-aid counsel may be appointed to assist in representing the victim, and the mere ornamental presence of the victim, or their representative, without affording them an effective right of hearing, would not suffice.”

12. Record shows that present bail application was put up before Ld. Link ASJ on 05.02.2024 wherein Ld. Counsel for complainant was also present. After hearing part arguments, matter was adjourned on the request of Ld. Counsel for complainant on the ground that he had to go through the application filed by the accused. This observation in itself shows that Ld. Counsel for complainant was having the copy of bail application otherwise he could not gone through the same. It is also to be noted that Ld. Counsel for complainant had also appeared before Ld. Link ASJ on 06.02.2024 and



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no such submission regarding copy of application having not been received by him was made. In these circumstances, his submission that he was not having the copy of application was clearly contrary to the record. As far as his other submission to the effect that he was not having the charge-sheet is concerned, it is to be seen that he has appeared through VC before Ld. ACMM where the charge-sheet is pending committal proceedings. There is no provision in law whereby the complainant can seek copy of charge-sheet from prosecution as matter of right however, there is no bar if the Ld. Counsel for complainant moves an application for inspection of file. Ld. Counsel for complainant could have exercised that option in this matter also and his failure to do so cannot be considered as a bar in hearing and disposing of the present bail application of the applicant. It is also to be noted here that the complainant who was present in the Court, was heard at length.

13. On merits, it is to be noted that present FIR was registered for the offences U/s 376/506 IPC on 10.12.2023. The application herein was arrested on 16.12.2023 and was released on interim bail on 08.01.2024 for marriage of his sister and same was extended vide order dated 06.02.2024 of Ld. Link ASJ till today i.e., 21.02.2024. In the meanwhile, charge-sheet has been filed against him after completion of investigation for the offence U/s 376/377/506/34 IPC. One Ms. Isha Shreya and Mr. Abhishek Kumar have also been charge-sheeted for the some minor offences. The charge-sheet is pending scrutiny of documents and committal proceedings before Ld. Magistrate. No doubt, the trial will take time to conclude.

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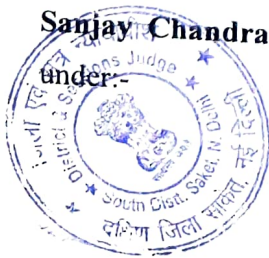
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14. The ground being taken by Ld. Counsel for applicant for bail of the applicant is that investigation was complete and no purpose shall be served by sending him again behind the bars. He has also submitted that he was ready to abide by any condition to be imposed by this Court. He also stated that bail is rule and jail is exception. This Court had put specific query to Ld. Addl. PP for State as well as to the complainant as to what purpose shall be served now by sending the applicant behind bars to which no answer was given. This question assumed significance considering that the applicant was out of jail for more than 40 days and it is not the case of prosecution that he had misused his liberty in any manner whatsoever. Regarding the principles qua bail, this Court is guided by judgment of Hon'ble Apex Court in **Anil Kumar Yadav Vs. State NCT of Delhi 2018 (12) SCC 129** wherein it was held as under :-

“While granting bail, the relevant considerations are :- (i) nature of seriousness of the offence; (ii) character of the evidence and circumstances which are peculiar to the accused; (iii) likelihood of the accused fleeing from justice; (iv) the impact that his release may make on the prosecution witnesses, its impact on the society; and (v) likelihood of his tampering. No doubt, this list is not exhaustive. There are no hard and fast rules regarding grant of refusal of bail, each case has to be considered on its own merits. The matter always calls for judicious exercise of discretion by the Court.”

15. This Court is also guided by the judgment of Hon'ble Apex Court in **Sanjay Chandra Vs. C.B.I AIR 2012 SC 830** wherein it was held as under:-



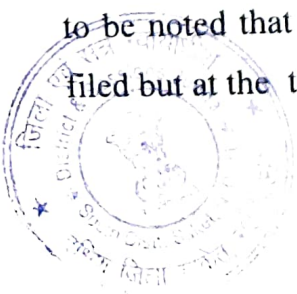
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“16. Thus the legal principle and practice validate the Court considering the likelihood of the applicant interfering with witnesses for the prosecution or otherwise polluting the process of justice. It is not only traditional but rational, in this context, to enquire into the antecedents of a man who is applying for bail to find whether he has a bad record--particularly a record which suggests that he is likely to commit serious offences while on bail. In regard to habituals, it is part of criminological history that a thoughtless bail order has enabled the bailee to exploit the opportunity to inflict further crimes on the members of society. Bail discretion, on the basis of evidence about the criminal record of a defendant, is therefore not an exercise in irrelevance.

17. The significance and sweep of Article 21 make the deprivation of liberty a matter of grave concern and permissible only when the law authorising it is reasonable, even-handed and geared to the goals of community good and State necessity spelt out in Article 19. Indeed, the considerations I have set out as criteria are germane to the constitutional proposition I have deduced. Reasonableness postulates intelligent care and predicates that deprivation of freedom by refusal of bail is not for punitive purpose but for the bi-focal interests of justice--to the individual involved and society affected.”

16. This Court is conscious of the judgment of Hon'ble Apex Court in **Virupakshappa Gouda And Another Vs. The State of Karnataka And Another Crl. Appeal No. 601 /2017** wherein it was held that mere filing of charge-sheet cannot be a ground to release an accused on bail however, it is to be noted that in this particular case not only the charge-sheet has been



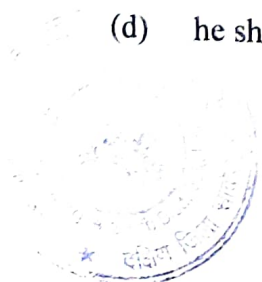
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already out of custody on interim bail. It is settled law that merely because the accused was out on interim bail does not entitle him to be released on regular bail still considering the facts and circumstances alongwith the valuable right to life and liberty of the applicant and the fact that there was no apprehension of the prosecution or the complainant that the applicant can influence/intimidate the witnesses, it will not be in the interest of justice to send the applicant in custody again. The submission of complainant to the effect that the applicant has not married her despite assurances given by his relatives at the time of hearing of his interim bail application on 08.01.2024 cannot be taken into consideration while disposing the present application. To ensure that the trial is not hampered due to applicant being out of custody, suitable conditions can be imposed upon him. Accordingly, the accused/applicant is hereby admitted to bail on furnishing of bail bond for a sum of Rs. 1 lac with two sound sureties in the like amount to the satisfaction of Ld. Magistrate /Duty MM. In case, the applicant fails to furnish the sureties by 04:30 PM, he shall surrender before Jail Superintendent concerned as per rules. While on bail accused/applicant shall abide by following conditions:

- (a) he shall regularly appear before the Court on each and every date.
- (b) he shall not contact the complainant/her family members in any manner whatsoever.
- (c) he shall intimate the Court in case of change of his address.
- (d) he shall not go out of country without permission of the Court.



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17. Violation of any of the above conditions shall entail necessary consequences as per law. Bail application stands disposed of.

Judicial file alongwith copy of order be sent back

Copy dasti to all concerned.

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(Sunil Gupta)

Addl. Sessions Judge-06 (South)
Saket Courts/ New Delhi/21.02.2024