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

+ BAIL APPLN. 2399/2024

PRINCE

.....Petitioner

Through: Mr. Shiv Kumar Gautam, Mr. Gaurav Singh, Mr. Rohit Gupta and Mr. Shanu, Advocates.

versus

STATE OF GOVT OF NCT OF DELHI & ORS. ....Respondents

Through: Mr. Utkarsh, APP for the State with Mr. Sachin Khari and Ms. Sarika Khari, Advocates.

SI Savita Solanki, P.S.: Punjabi Bagh.

**CORAM:**

**HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI**

**ORDER**

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**12.07.2024**

**CRL.M.A. 20164/2024 (exemption)**

Exemption granted, subject to just exceptions.

Let requisite compliances be made within 01 week.

The application stands disposed of.

**BAIL APPLN. 2399/2024**

At the outset, it is noticed that the complainant/prosecutrix has been *impleaded* as party-respondent No.2 in the petition. In view of the decision of this court in *Saleem vs. State (NCT of Delhi) &Anr.*<sup>1</sup> and Practice Directions dated 04.10.2023 issued by the Delhi High Court pursuant thereto, the said respondent is deleted from the array of party-respondents.

2. Let Amended Memo of Parties be filed within 01 week.

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<sup>1</sup>(2023) 300 DLT 714



3. By way of the present petition filed under section 438 read with section 482 of the Code of Criminal Procedure 1973 ('Cr.P.C.'), the petitioner seeks anticipatory bail in case FIR No.318/2024 dated 18.05.2024 registered under sections 376/328/506 at P.S.: Punjabi Bagh.
4. Though the present petition has been filed under the provisions of the Code of Criminal Procedure 1973 ('Cr.P.C.'), in the opinion of this court, on a plain reading of section 531(2)(a) of the Bharatiya Nagarik Suraksha Sanhita 2023 ('BNSS'), proceedings are to be "... ..disposed of, continued, held or made... .." in accordance with the Cr.P.C. *only* in cases where ***such proceedings***, viz. "... ..any appeal, application, trial, inquiry or investigation... ..", was *pending* immediately before the date on which the BNSS came into force, *i.e.* 01.07.2024.
5. In the circumstances, since the present petition has been filed after 01.07.2024, in the opinion of this court, the present petition ought to have been filed under the BNSS. Be that as it may, in order to obviate any unnecessary delay, the present petition is treated as one under section 482 read with 528 of the BNSS.
6. It may be observed however, that any objection that may be taken in the above regard, is kept open to be decided subsequently.
7. Mr. Shiv Kumar Gautam, learned counsel appearing for the petitioner submits, that the petitioner was in a relationship with the complainant/prosecutrix, which subsequently culminated in the parties getting married, as evidenced by the marriage certificate dated 19.01.2024 issued by the Arya Samaj Mandir Trust, Gokhale Market, Delhi.
8. Counsel submits, that to be clear, from the petitioner's perspective the marriage was a result of coercion on the part of the prosecutrix, which



the petitioner was unable to resist at that time. Counsel submits that in view thereof, the petitioner filed a petition under section 12 of the Hindu Marriage Act 1955 before the learned Principal Judge, Family Courts, Tis Hazari Courts, Delhi, seeking that the marriage be declared a nullity, which petition is still pending before that court.

9. Be that as it may, it is pointed-out that on a plain reading of the allegations in the FIR, the allegation that the petitioner made physical relations with the prosecutrix relate to 18.01.2024, and the very next day *i.e.*, 19.01.2024, the parties had got married, as evidenced by marriage certificate dated 19.01.2024.
10. Issue notice.
11. Mr. Utkarsh, learned APP appears on behalf of the State on advance copy; accepts notice; and seeks time to file status report.
12. On instructions of the Investigating Officer, who is present in court, learned APP submits that the prosecutrix had initially made a complaint *via* a PCR call which was noted *vide* DD entry No.115A dated 18.01.2024, which complaint was however subsequently withdrawn by her. Learned APP submits, that by reason thereof in their status report dated 27.05.2024 filed before the learned ASJ, the Investigating Officer had stated that when the prosecutrix was called-for counseling, she gave no history of sexual or physical assault and by way of a self-written statement in Hindi, apart from confirming that there had not been physical or sexual assault, she had further stated that she made the PCR call because of some altercation she had had with the petitioner, but that she neither wanted to be medically examined nor did she want any action pursuant to that PCR call.



13. Learned APP submits however, that later on, the prosecutrix again filed a complaint dated 12.02.2024 to the police alleging that he made physical relations with her without her consent on 18.01.2024, after which she was forced to marry him. Meanwhile the prosecutrix preferred an application before the learned Magistrate, Tis Hazari Courts, Delhi under section 156(3) Cr.P.C., and based on order dated 15.05.2024 made by the learned Magistrate in complaint case bearing Ct. No.801/2024, the subject FIR came to be registered.
14. Let status report be filed at least 03 days before the next date.
15. Let intimation under section 439(1-A) Cr.P.C. read with the Delhi High Court Practice Directions dated 24.09.2019 in form *Annexure-A* attached to the Practice Directions, be also sent by the Investigating Officer to the complainant/victim/prosecutrix, informing her that she is entitled to be heard in these proceedings, for which she may remain present (either in-person or *via* video-conferencing) or be represented on the next date.
16. In the meantime, considering the allegations made in the FIR, as seen in light of certificate of marriage dated 19.01.2024 issued by Arya Samaj Mandir Trust, and subject to petitioner joining investigation as and when called-for by the Investigating Officer, no coercive steps shall be taken against the petitioner till next date of hearing.
17. Re-notify on 25<sup>th</sup> October 2024.

**ANUP JAIRAM BHAMBHANI, J**

**JULY 12, 2024/ V.Rawat**