

Bhushan Lal Khanna vs State on 11 July, 2018

Author: Anu Malhotra

Bench: Anu Malhotra

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on :3rd April, 2018

Date of decision :11th July, 2018

BAIL APPLN. 2529/17

BHUSHAN LAL KHANNA

Through

..... Petitioner

Mr. Vikas Pahwa, Sr. Advocate
with Mr. L.K. Mishra and
Ms.Kinnori Ghosh, Advocates

versus

STATE

(GOVT. OF NCT OF DELHI)

Through:

..... Respondent

Mr.Ashish Dutta,APP for the
State with Inspector Jeevat
Ram, PS DIU

Mr.Saleem Ahmed, Ms. Charu
Dalal and Mr.Ajay Pratap
Singh, Advocates for the
complainant.

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT

ANU MALHOTRA, J.

1. The applicant of Crl. M. (Bail) 2529/2017 seeks the grant of anticipatory bail under Section 438 read with Section 482 Code of Criminal Procedure, 1973 in relation to allegations levelled against him qua the alleged commission of rape of the prosecutrix Ms. „X of the offence punishable under Section 376 Cr.P.C. qua which the FIR with Police Station New Ashok Nagar was registered against the applicant on 8.6.2017 with the period of the alleged commission of the offence being from the date 7.3.2017 to 30.4.2017.

2. As per the averments made in the FIR dated 08.06.2017, the prosecutrix a resident of New Ashok Nagar, Vasundhara Enclave, East Delhi on 7.2.2017 after having taken a mobile number of the builder from her name sake brother Dalip Kumar, had gone to see a flat to be taken on rent where she met Alok Vats of the Newtech Group at his office and there were conversations in relation to rent and sales and in the meantime Alok Vats introduced her to Bhushan Lal Khanna, i.e. the petitioner herein and his partner Sanjiv, and they also insisted that she had lunch with them and

they had lunch at Sagar Ratna and thereafter she was shown the flat and they came back to the office of Alok Vats who asked his driver to get her dropped at her residence and thereafter at about 10:22 p.m. she received a message on the WhatsApp from mobile No. +12516481314 in which it was stated that "How r you Shivani-10:22 p.m. This is Bhushan from Atlanta-10:29 p.m." and on her asking that person told her that he had taken her number from Alok Vats. The prosecutrix further through the FIR submitted that she took the message lightly and chatted with that person and he asked her to make a phone call and WhatsApp call to her and that night they had a conversation in relation to rent and sales of flats whereafter there were daily conversations and the petitioner also told her that one of his apartments was to be vacated and she could take the same on rent @ Rs. 10,000/- per month. The prosecutrix stated that she requested that she be allowed to see the flat but she was not shown the flat and the petitioner kept on repeatedly making chats and WhatsApp calls to her.

3. As per the FIR, thereafter on 13.2.2017, the petitioner telephoned her and informed her that he had booked movie tickets for 1:30 p.m. and during the movie he held her hand and she did not take this act lightly and pushed off his hand and after the movie, the petitioner left her home and called her in the night and told her that the next day, i.e., on 14.2.2017, he was going to Atlanta, U.S.A and that he would show her the flat and then he suddenly told her to meet him between 4 p.m. to 4:30 p.m. on 14.2.2017. As per the FIR, the prosecutrix submitted that the next date on 14.2.2017 she went to meet him and the petitioner started speaking to her sweetly and told her that he was a divorcee and wanted to marry a girl like her and he gave her a rose and a chocolate and proposed love to her and on hearing the same she was taken slightly aback and told him that there was a lot of difference in their ages to which the petitioner responded that in Atlanta, USA, this was a normal feature and asked her to accept his proposal and told her that she could take time and then he took his flight to USA, whereafter both of them continued on the WhatsApp chat and there were conversations about themselves made by them, i.e., the petitioner and the prosecutrix and they got attracted to each other and the petitioner also informed her that he was returning to India and that he would take a flat on rent near her residence and would also teach her a lot of things like speaking English, reducing weight and becoming self dependent and he showed her big dreams and made her dream.

4. As per the FIR after several days he told her that when he came to the airport at India, she alone should come and meet him and on 3.3.2017 she went to the Indira Gandhi International Airport to pick him up and she gave him a bouquet whereupon he told her that he be taken to her flat because he had to go to attend a marriage and she should also accompany him and she, the prosecutrix, agreed to the same and during this period, the petitioner kept his articles in her room. The prosecutrix further submitted that the photographs of that wedding were there in her mobile and after they came back from the wedding to her room, the petitioner stayed at her room and when she asked him the next day to leave the room, he told her that he would search a new flat and would shift in the same and she accompanied him the whole day in search of a flat and he stated that rather than living with his family members he would live in a flat nearby her residence, but despite a lot of efforts and search, they could not find an appropriate flat and the prosecutrix submitted through the FIR that this was a ploy of the petitioner and he stated that he would live with her and as a consequence thereafter the petitioner started living with her and duped her into physical relations with him stating to her that he would marry her and he started using her debit card and her cash

and though she used to oppose the same, he used to make her keep quiet stating that he would marry her and would take her to USA and when she informed him that she did not have a passport, as a consequence thereof he also got her passport prepared through his e-mail and assured her that she should trust him as he had even got her passport prepared. The prosecutrix further submitted that thereafter several times, the petitioner forcibly had physical relations with her and also purchased medicines for her, one of which was named 72 Hours Pills and he also gave her several other medicines stating that these medicines would result into reduction of her weight and would make her fit. The prosecutrix stated that after consuming of these medicines she had become giddy. Some of these medicines that had been purchased by the petitioner from the USA were with her and after 30 to 45 days with her, the petitioner went back to the USA and after a month she realized that she did not have her periods as a consequence of which she informed the petitioner of the same who asked her to get a pregnancy test done and also sent her the photo of the company kit for getting the test done through WhatsApp and she received that kit from an unknown person through a shop which indicated a positive result and on 15.4.2017 she telephoned the petitioner to which the petitioner did not respond and thus she telephoned Alok Vats to which Alok Vats told her not to make any complaint to the police and also told her that he was of the age of her father and would not advise her wrongly and would look after her like her parents. She further stated that she does not know what plan was prepared by Alok Vats and the petitioner and they made her sign on a paper and deposited some money in her account and told her that the said money was for her expenses and recovery and that she would soon be better and also stated that he would always support her and that the petitioner also told her that when he would return to India, they would marry but the petitioner had started retracting from his promise and had started saying that if she continued persisting for the same he would get her killed and that he had a lot of money and that he could purchase the police, the lawyer and the judge. The prosecutrix further stated through the FIR that on 6.6.2017 in the night she received a call from Alok Vats that she must not complain to the police and that he would manage everything and asked her to leave Delhi but despite that she wrote a complaint to the police. The prosecutrix further stated through the FIR that on 6.6.2017 at about 12:30 a.m. she received a call from the petitioner from mobile No. +91 9939259051 who told her that he would kill her and asked her to leave Delhi. The prosecutrix thus sought action against the petitioner who had raped her. As per the FIR, the prosecutrix was of the age of 25 years at the time of lodging of the FIR and thereafter she was got medically examined at the Lal Bahadur Shastri Hospital at Khichiripur whereafter on the basis of her complaint, the FIR was got registered on 8.6.2017.

5. As per the status report dated 14.12.2017 submitted under the signatures of the SHO New Ashok Nagar, the prosecutrix Ms. „X refused her internal medical examination and her statement under Section 164 of the Code of Criminal Procedure, 1973, was thereafter recorded in which she supported the averments made in the FIR.

6. In her statement under Section 164 Code of Criminal Procedure, 1973, dated 09.06.2017, apart from the prosecutrix putting forth the same version as brought forth by the FIR, she also stated that the movie they watched at Wave Mall, Sector-18, Noida was Jolly LL.B- 2, which they so watched and the tickets which were expensive were bought from her SIM and that the cost of the same was Rs.1200/- and on 14.2.2017, the petitioner wished her Valentine's Day. Through her statement

under Section 164 of the Code of Criminal Procedure, 1973, the prosecutrix also stated that the petitioner had asked her to come to the airport with flowers which she had taken. In her statement under Section 164 of the Code of Criminal Procedure, 1973, the prosecutrix has further stated that the petitioner used to take her for a run at the park each morning. As per the statement under Section 164 of the Code of Criminal Procedure, 1973, the prosecutrix further stated that when the petitioner learned that she had suffered a miscarriage he refused to come to India but also stopped payment of two cheques, the prosecutrix having also stated that she had been given a cheque for Rs.4 lakhs previously when she had been made to sign a paper in English, so that she did not get the FIR lodged against the applicant till he came to India.

7. During the course of the hearing of the present petition vide order dated 08.12.2017, the applicant was directed not to be arrested till 18.12.2017 subject to the conditions that he joined the investigation of the case as and when required that he would not leave the city and would not intimidate the witnesses, and would not contact the complainant and would not tamper with the evidence which interim protection is in existence till date in terms of order dated 03.04.2018. It was submitted on behalf of the State that a LOC had issued against the applicant.

8. As per the averments made in the application under consideration, the petitioner contended that the prosecutrix herself had gone to the airport to receive him and herself had taken him to her house where the alleged physical relations had taken place on several occasions and that as per the averments made by the petitioner she had gone to see the movie with the petitioner which clearly brought forth her sweet will and consent. The petitioner has further submitted that the prosecutrix was well aware that the petitioner was already married and he was double the age of the prosecutrix and that the prosecutrix had initially compelled the petitioner for physical relations and subsequently started black mailing him and due to fear and in order to save her reputation, the petitioner had become tensed and started providing all requirements including gifts and cash as demanded by the prosecutrix.

9. The petitioner further submitted through the application that on 25.4.2017 the final settlement agreement, affidavit and an indemnity bond were executed between the petitioner and the prosecutrix in which the petitioner agreed to pay Rs.31,00,000/- to the prosecutrix under compulsion and issued the Post dated cheques i.e., first cheque of Rs.4,00,000/- bearing No.0004010 of the RBL Bank which was duly encashed in the account of the prosecutrix and that another cheque dated 8.6.2017 of a sum of Rs.5,00,000/- had been given by the petitioner to the prosecutrix but when the petitioner learnt of the registration of the FIR, he stopped the payment of the other cheque. The petitioner has further submitted that the directors of the company had planned to take a sum of Rs.7 crores from the petitioner but the matter was settled according to the petitioner at Rs.31,00,000/- only and then they instigated the prosecutrix and under a pre-planned conspiracy, the FIR was registered against the petitioner.

10. The copy of the said final settlement agreement dated 23.5.2017 between the petitioner as the first party and the prosecutrix as the second party is placed on the record along with the application under consideration to which the petitioner and the prosecutrix are indicated to be signatories with the witnesses thereto being Alok Vats and Yusuf S/o Allanoor with the said documents being

notarized on 24.5.2017. Along with the same is also an affidavit of the prosecutrix dated 23.5.2017.

11. As per the said agreement, the aspect of the petitioner and the prosecutrix having fallen in love within a short span of time and of staying together and the financial transactions taking place and SMS- chat & messenger conversations taking place between the parties who lived together to be married and also having entered into physical intimacy and of the petitioner having shifted to his temporary residence at Noida on 23.3.2017 and finally returning to the USA on 5.5.2017 and of the prosecutrix having felt aggrieved and deserted, physically and emotionally misused/tortured despite the relations being consensual are all dealt with and the final settlement agreement also indicated that the sum of Rs.31 lakhs was paid through cheques to the prosecutrix by the petitioner and the prosecutrix had also undertaken to withdraw her complaint lodged by her in the Police Station New Ashok Nagar and she undertook that there will not be litigations anymore if the agreement was signed.

12. As per the status report, the first cheque bearing No. 000010 was to be paid to the tune of Rs.4,00,000/- in favour of the prosecutrix drawn on RBL Bank dated 23.5.2017. As per the settlement agreement, the prosecutrix undertook that the settlement had a binding condition of „non-disclosure document clause and that she undertook not to utilize any private or financial information in any manner and an indemnity bond dated 23.5.2017 was also annexed to this settlement agreement as executed by the prosecutrix through which she stated that she had received a cheque amounting to Rs.31,00,000/- as detailed in the settlement agreement.

13. Vide order dated 08.12.2017, a status report was called for from the police qua the said settlement document. The status report dated 14.12.2017 submitted by the SHO, Police Station New Ashok Nagar, reports that the prosecutrix on being enquired about the said final settlement stated that she had not signed such type of settlement but that the witnesses mentioned in the said settlement Alok Vats, and Yusuf Khan from whom also enquires were made stated that the said final settlement had been executed in their presence and that they had signed the said final settlement and the complainant had also signed the final settlement in their presence. An Advocate, Sh. D.K.Sharma from whom enquiries were made also stated that the said final settlement was executed in his presence at Noida, U.P. and stated the complainant also signed the said settlement agreement in his presence. As per the enquiry conducted by the Investigating Agency, the cheque bearing No.000010 of the RBL Bank amounting to Rs.4 lakhs which was mentioned in the final settlement was credited in the account of the complainant and the complainant had also withdrawn the said amount.

14. Pursuant to the directions of the Court, the petitioner as directed is reported to have joined the investigation on 11,12,13/12/2017 and on 15.12.2017 the investigation was transferred to DIU (East).

15. The petitioner through his petition has submitted that he is a law abiding and peace loving citizen and an NRI and has never been involved in any manner in any criminal case and his antecedents are crystal clear and that he has been falsely implicated by the prosecutrix in connivance with the other Directors of Newtech La Palacia Pvt. Ltd., office at 219, SF, Vasundhra Enclave, Plot No.1 Delhi-110096 with the sole intention to grab Rs.7 crores which had been invested

by the petitioner in the said company. According to the petitioner, he was willing to invest his money in a construction business and his friend, namely, Mukesh Rai introduced the petitioner to the Directors of the said company Alok Vats, Roshan Prakash and Sanjeev Kumar and he was to get 25% share of the company and the petitioner was also assured of higher returns and fixed return and on 23.12.2016 on the assurance of the directors of the said company, the petitioner transferred Rs.7 crores through RTGS, and the petitioner was subsequently appointed as the Director of the said company. It has been submitted by the petitioner that subsequently on 10.2.2017 one of the directors of the said company, namely, Alok Vats introduced the prosecutrix to the petitioner as a Chief Officer of the company and the prosecutrix had taken the number of the petitioner and started honey trapping the petitioner in a pre-planned manner and as per the version of the FIR, it has been submitted by the petitioner, that the FIR itself indicates that the prosecutrix herself went on 5.3.2017 to receive the petitioner and took him to her house and thus the alleged physical relations that had taken place at her house on numerous occasions itself indicate that it cannot be termed to be a rape.

16. It has been submitted by the petitioner that the prosecutrix was well aware that he was already married and was double the age of the prosecutrix and there was no question of any promise to marry and that the version put forth by the prosecutrix in the FIR is wholly concocted. The petitioner contended that the prosecutrix herself initiated/compelled the petitioner to establish physical relations and subsequently started blackmailing him and due to fear and in order to save her reputation the petitioner became tense and provided her all requirements including gifts and cash as demanded by the prosecutrix whereafter the agreement dated 24.5.2017, referred to herein above, affidavit and the indemnity bond between the petitioner and the prosecutrix were executed. The petitioner has further submitted that he has been falsely implicated in the instant case and the FIR has been registered after five months of the alleged incident and the inordinate delay in the registration of the FIR under Section 376 Indian Penal Code, 1860, is fatal to the chances of conviction as the medical, scientific and circumstantial evidence is most likely to vanish as laid down by a catena of verdicts.

17. It has also been submitted by the petitioner that on 21.5.2017, i.e., prior to the registration of the FIR registered on 08.06.2017, the petitioner had already submitted a written complaint to the SHO, Police Station Sector 20, Gautam Budh Nagar against the prosecutrix and to the Prime Minister of India on 23.5.2017 and to the higher police officers and ministers on 18.5.2017 and the petitioner had also moved an appropriate application under Section 156(3) Code of Criminal Procedure, 1973 against the prosecutrix and her associates for registration of the FIR in the Court of CJM Gautam Budh Nagar which application was filed on 22.5.2017 and the CJM, Gautam Budh Nagar, directed the registration of the FIR against the prosecutrix vide Crime Case No. 0762 dated 6.7.2017 under Sections 388/406/467/468/471/120-B Indian Penal Code, 1860, at Police Station Sector-20, Noida. The petitioner has further submitted that after the petitioner learnt of the registration of the present FIR No. 271/17, Police Station New Ashok Nagar against him, the petitioner gave a written complaint on 12.8.2017 to the Delhi Police annexing all the documents for verification of the true facts behind the registration of the case against him.

18. The petitioner has further submitted that the prosecutrix had refused to undergo any medical examination and reliance was thus placed on behalf of the petitioner on the verdicts in Deepak Dua v. State of NCT of Delhi; Bail Appln. No. 2369/16; and the verdict of Mohd. Moiz v. State (Govt. of NCT of Delhi); bail application No.2207/16; Sandeep Kumar v. State (NCT of Delhi); Bail Appln No. 1182/2017 where medical examination was refused by the prosecutrix therein and the applicants were held entitled to be released on anticipatory bail.

19. It has further been submitted by the petitioner that the intention of the prosecutrix was mala fide since inception as she was representing herself as Ms.X Chaudhary, Ms.X Jain, Ms.X Vats, Ms.X Singh and Ms.X Devi with the sole intention to trap innocent persons to extort money and that rather the petitioner is the real victim and the prosecutrix is the accused. The petitioner further contended that the prosecutrix is aged 25 years, highly qualified doing a private job and can understand what is good or bad for her and in a similar situation in Hon ble High Court of Bombay in Sumit Siddramappa Patil v. State of Maharashtra & Anr. decided on 10.3.2016 and in Sqnlder Rohit Kumar Tomar v. State of NCT of Delhi; Bail Application No. 240/16 in this Court, anticipatory bail has been granted. It has also been submitted on behalf of the petitioner whilst placing reliance on the verdicts of the Hon ble Supreme Court in:-

Dilip Singh v. State of Bihar; (2005) 1 SCC 88, Prashant Bharti v. State of NCT of Delhi; (2013) 1 Crimes 495 (SC), K. P. Thimmippa Godda v. State of Karnataka; Crl.appeal No. 499/2004, Uday v. State of Karnataka; 2003 (1) JCC 506 and Harish Kumar v. State 2010 (4) JCC 2371, to contend that a promise to marry which is later denied does not amount to the commission of the offence of rape and it is a breach of promise and the complainant should seek a civil remedy.

20. Reliance was placed on behalf of the petitioner on the verdict of this Court in Jagdish Nautiyal v. State; Bail Appln. No. 1317/12, Rohit Chauhan v. State of NCT Delhi; Bail Appln No. 311/13, Vikas Rana V. State; Bail Appln. No. 2158/14, Vishal Grover v. State; Bail Appln No. 2355/16, Dinesh Malhotra V. State of NCT of Delhi; Bail Appln. No. 1377/2017, Sarabjeet Singh V. State; Bail Appln. No. 1579/2017, Mukesh v. State of Delhi; Bail Appln No. 1420/2013, Arshu @ Ashar v. NCT of Delhi; Bail Appln. No. 1981/2015, Pankaj v. State of NCT of Delhi; Bail Appln. No. 339/2016 and Ashu Kumar v. State of NCT of Delhi; Bail Appln No. 262/2009.

21. Inter alia, the petitioner has submitted that he was granted interim protection and he joined the investigation. He submitted further that the Sessions Court had dismissed his bail application holding that NBWs, and proceedings under Section 82 Code of Criminal Procedure, 1973 had already been initiated but that the same did not suffice to negate the grant of bail where the applicant seeks the grant of bail, submitting to the effect that in Bail Appln. No. 2110/2015 Anuj Ahuja v. Govt. of NCT of Delhi and Bail Appln. No. 1161/2012 Manju Garg & Another v. State, even though proceedings under Section 82 Code of Criminal Procedure, 1973 had been initiated and the accused of the crime was yet to be arrested, it was held that that was no ground for denial of anticipatory bail. As regards this submission, it is essential to observe that the proceedings under Section 82 of the Cr.PC, 1973 against the petitioner qua FIR No.271/17, PS New Ashok Nagar have already been dropped vide order dated 21.12.2017 of the Ld. ACMM.

22. The petitioner has further submitted that he is innocent and the physical relations between the prosecutrix and himself were consensual and that whether they were on the pretext of a marriage or not, his custodial interrogation was not required in the instant case. The applicant has further submitted that he is willing to join the investigation and has already joined the investigation and is ready to abide by the terms and conditions imposed by the Court.

23. The status report dated 17.1.2018 submitted by the Inspector Rambir Singh, DIU/East Distt. in the case indicates that a Look Out Circular was issued by the Bureau of Immigration (MHA) Govt. of India dated 28.7.2017 (LOC Suspect No.-746803) which is valid upto 21.07.2018 and that proceedings under Section 82 Code of Criminal Procedure, 1973, were initiated against the petitioner on 29.7.2017.

24. The report of Inspector Rajeev Vimal, Police Station New Ashok Nagar, on the complaint of the petitioner Bhushan Lal Khanna reads to the effect:

"It is submitted that the complainant Mr. Bhushan Lal Khanna has lodged a complaint in reference to case FIR No.271/17 U/S 376 IPG P.S. New Ashok Nagar registered against him. The complainant has alleged that he is trapped in above cited case under a criminal conspiracy. The complainant has stated in his complaint that one of his friend Mukesh Ray introduced him to Alok Vats one of the director, Newteck Palacia Pvt. Ltd and lured him to invest in his company and promised him for good returns. The complainant Bhushan Lal Khanna invested Rs. 7 crore in his company and he was appointed as one of the directors with 25% share in company. On dated 10, Feb 2017 the complainant visited at the office of Alok Vats, Director of the Company and Alok Vats introduced him with a lady Ms.X, an employee of the Company. The lady Ms.X got the mobile number of the complainant and started conversation with Bhushan Lal Khanna. On dated 13.02.17 the lady Ms.X invited him at her residence i.e C-271/A, New Ashok Nagar, Delhi - 96 and dined there. On 14.02.17 the complainant Bhushan and Ms.X celebrated Valentine day at Sect. 18, Noida and in the evening of 14.02.17 the complainant left for America. The lady Ms.X made regular calls and messages to him and on 05.03.17, the complainant arrived in India and the lady Ms.X received him at Airport and asked him to stay at her residence. The complainant stayed with her till 23.03.17 and gave Rs. 1 Lakh to Ms.X for her basic needs. Soon after Ms.X started black mailing him and asked for Rs. 31 Lakh or she would register a rape case against him. The complainant gave PDC of Rs. 31 Lakh to Ms.X and an agreement was signed by both not to proceed with any action out of which a cheque of 4 lakhs was clear in the account of Ms.X and Rs. 4 Lakhs was deposited in the account of Smt. Babita and is 6 lacs was given in cash to Mukesh Ray. Later when the complainant came to know that Ms.X has registered a rape case against him, the further payments were stopped by him. The complainant has alleged that he was trapped by the lady Ms.X and Alok Vats under a criminal conspiracy to extort money from him.

Gist of FIR and Investigation:-

On dated 08.06.17 Ms.X D/o Bhoram Singh R/o C-271, New Ashok Nagar, Delhi reported at P. 8 New Ashok Nagar and lodged a complainant that she was introduced to Bhushan Lal Khanna by Alok Vats and thereafter Bhushan Khanna started calling and messaging her regularly. She also stated that on 14.02.17, Bhushan Khanna proposed her and left for America. But when he came back on 03.03.17, he stayed with her at her residence and on the pretext of marriage he forcibly made physical relation with her. After a month he again left for America and thereafter he ignored her and refused to marry her and also threatened her to kill. A case U/S 376 IPC vide FIR No. 271/17 was registered and the investigation was assigned to W/SI Seema Bhati P.S. New Ashok Nagar, Delhi. During the investigation the prosecutrix Ms.X was examined and her statement U/s 164 Cr.P.C was recorded by the Hon'ble Court. The accused is presently abroad and necessary proceedings are on the way to finalize the investigation of the case.

Enquiry:-

Enquiry in the matter has been conducted by the under signed and call details of the lady Ms.X and the alleged person Bhushan Lal Khanna have been analysed and it is revealed that there was regular conversation between both of them. The transaction of money invested by Bhushan Kharma in the Company of Mukesh Ray and Alok Vats is also verified and found genuine. The agreement of final settlement between Ms.X and Bhushan Lal Khanna is signed by both with mutual understanding for a deal of Rs. 31 Lacs and PDC had been issued to Ms.X vides cheque Nos.

1 Cheque No. 000010 Dt. 23.05.17 RBL Bank Rs. 4,00,000/-

2 Cheque No. 000011 Dt. 08.06.17 RBL Bank Rs. 5,00,000/-

3 Cheque No. 000012 Dt. 23.06.17 RBL Bank Rs. 5,00,000/-

4 Cheque No. 000013 Dt. 08.07.17 RBL Bank Rs. 5,00,000/-

5 Cheque No. 000014 Dt. 23.07.17 RBL Bank Rs. 6,00,000/-

6 Cheque No. 000015 Dt. 08.08.17 RBL Bank Rs. 6,00,000/-

and one of the cheque for Rs. 4 Lac was cleared in the account of Ms.X. It has also been revealed that the Rs. 6.94 Crore were invested by Bhushan Lal Khanna in the Company Newtech Palacia Pvt. Ltd. through RTGS on dated 23.12.2016. The message between Bhushan Khanna and Ms.X has also been examined and it can not be proved that Bhushan Lal Khanna had ever promised her for marriage. Moreover it is also to mentioned that as per the order / direction of The Hon'ble Court of CJM, Gautam Budh Nagar UP, A Case vide FIR No. 762/17 U/S 388/420/406/467/468/471/120-B IPC P.S. Sect. 20 Noida has been registered on the complainant of Sh. Bhushan Lal Khanna against Ms.X and other. The case is presently under investigation.

In view of above fact and the investigation of the registered case and facts revealed out from enquiry, both Ms.X and Bhushan Khanna lived together in live-in- relationship with their own consent. Ms.X has received Rs.4,00,000/- through Cheque and signed the agreement for final settlement of separation. As a Case, as per the order of Hon'ble CJM Gautam Budh Nagar, vide FIR No. 762/17 U/S 388/420/406/467/468/471/120-B IPG P.S. Sect. 20 Noida has been registered on the complainant of Sh. Bhushan Lal Khanna against Ms.X and other in Noida. Hence ingredients of criminal conspiracy cannot be ruled out. As the case registered in Noida is presently under the investigation so its investigation can also be effected by the present case. There are no specific grounds for the arrest of the accused for custodial interrogation. The case can be finalized without arrest of the accused. IO of the case may be directed to conduct the investigation of the case properly and submit the final report before the Hon'ble court shortly."

(The name of the complainant stated in the report is mentioned hereinabove as Ms. X.)

25. The status report dated 17.1.2018 under the signatures of Inspector Rambir Singh DIU/East Distt. Delhi, indicates that presently the petitioner holds one USA Passport No.529312815 along with corresponding OCI Card No.A2460851 which was updated on 27.10.2016 by Consulate General of India, Atlanta, U.S.A.

26. During the proceedings dated 17.1.2018 of this Court, it was submitted on behalf of the applicant/petitioner that the stated mobile had been handed over by the applicant to the Investigating Agency. The status report in relation to investigation conducted qua the said mobile phone was directed vide order dated 17.01.2018 to be submitted by the State.

27. Written submissions were submitted on behalf of the prosecutrix contending to the effect that the petitioner who is accused of rape, threat, fraud and forgery is misleading the Court to believe that he had been falsely implicated though he was the master mind behind trapping the prosecutrix and exploiting her physically as well as emotionally and thus he has trapped the prosecutrix by obtaining her mobile number from Alok Vats and contacted her on WhatsApp and trapped her and lured her into believing him that he wished to marry her. It is further submitted on behalf of the prosecutrix that the WhatsApp chats annexed alongwith the written submissions are valid proof of the actions of the petitioner and the livid details are clear that the petitioner lured the prosecutrix with a false promise of marriage so as to cause her to trust him and enter into a relationship with him by demonstrating his name, fame, money and impact in India and abroad.

It is further submitted on behalf of the prosecutrix that the petitioner constantly used to send photographs to the prosecutrix along with pictures of his swanky cars, household articles so as to impress the prosecutrix and lured her into believing that he was a good and well established match for her.

28. Inter alia on behalf of the prosecutrix reliance was placed on the verdict of the Supreme Court in Uday v. State of Karnataka; 2003 (2) SCALE 329, Yedla Srinivasa Rao V. State of A.P.; 2006 VIII AD (SC) 309, to contend that where the intentions of the accused are dishonest right from the beginning and he kept on promising that he would marry her till she became pregnant, it was a clear indication

to the effect that the consent for sexual intercourse had been obtained in total misconception and cannot be treated as a consent. It has been submitted through the written submissions of the prosecutrix that the agreement relied upon on behalf of the petitioner as executed between him and the prosecutrix was invalid and forged in as much as the prosecutrix had not signed the same and had not appeared before any Notary/Oath Commissioner in Noida (U.P.) and the signatures appended on the agreement are not hers and that the same is a forged document placed on record to seek grant of anticipatory bail .

29. It has been submitted on behalf of the prosecutrix that the sum of Rs.4,00,000/- was given to the prosecutrix by the petitioner through a cheque before leaving India so as to enable her to shop for her engagement with him which was to take place on 31.05.2017 but the same was also a false statement as the prosecutrix waited for him to return but he did not return as the petitioner never intended to marry her and this is when the prosecutrix realized that she had been wronged and filed the present FIR. It has been further further submitted on behalf of the prosecutrix that if the applicant is released on anticipatory bail he would indulge in influencing the trial by intimidating and threatening the prosecutrix as well as the witnesses to depose in his favour to avoid the punishment at any cost.

30. Reliance was also placed on behalf of the prosecutrix on the verdict of the Supreme Court in Jagtar Singh v. Satendra Kaur; 2002(6) SCALE 177 to contend that the accused having been absconding there is no question of grant of anticipatory bail or regular bail and as laid down by the Hon ble Supreme Court in State of Maharashtra V. Mohd. Sajid Hussain; 2008(1) SCC (Crl.) 176 one of the factors, while considering the application for grant of anticipatory bail is the possibility of the applicant, if granted bail, fleeing from justice. It has further been submitted on behalf of the prosecutrix that the investigation of the case is still at its nascent stage and that the applicant can misuse the grant of bail and tamper with the evidence and also blackmail/threaten the prosecutrix to depose in his favour.

31. Vide the additional affidavit of the petitioner placed on record dated 15.2.2018, it is inter alia indicated that the petitioner is married to Anjali Khanna and has a daughter, namely, Arpita Khanna and stays at 840 Mashburn Dr, Alphretta, GA 30022 USA. The petitioner through the said affidavit has also sought to put forth that he runs several business entities and that he is a real estate entrepreneur and he is owner of BAPS HOLDINGS LLC, a commercial land holding company, he is the owner of KNA Family Investments which deals in real estate backed security deed, mortgage notes acquisition, that the petitioner also manages KNA Hospitality Management LLC which manages, operates and maintains lodging properties and that the Hairston Square LLC is also owned by the petitioner. Inter alia the petitioner has submitted that there are several Court cases pending in the USA between him and other businesses in USA.

32. During the course of the present proceedings on 3.4.2018 qua Crl. M. A. No. 1356/2018, an application moved by the petitioner to seeking permission to leave the country to attend the mediation proceedings and other proceedings pending abroad, was vide order dated 3.4.2018 dismissed as not being pressed at that time.

33. Reliance was placed on behalf of the petitioner on the verdict of this Court in Bail Appln. No.2110/2015 titled Anuj Ahuja v. Govt. of NCT of Delhi, and on the verdict of this Court in Vikul Bakshi v. The State (NCT of Delhi); 2016 [1] JCC 54 to contend that where the parties were acquainted with each other before the incident and physical relations took place between the two on the alleged promise to marry and the prosecutrix lodged the FIR when allegedly the petitioner and his parents declined to solemnize their marriage, there is delay in lodging the FIR and the accused was allowed to be released on anticipatory bail subject to the conditions as imposed therein. Reliance was also placed on behalf of the petitioner on the verdict of this Court in Ashok Kumar v. State; 2014 [4] JCC 2399 to contend that where there was enough material on record to indicate that the prosecutrix had got the FIR registered to create an escape route for her family entangled in litigations, it was a fit case for enlargement of the petitioner on anticipatory bail conditionally.

34. The status report dated 16.3.2018 submitted under the signatures of Inspector Jeewat Ram Parmar, DIU/East Distt. Indicates that the original settlement documents dated 23.5.2017 was being sent to FSL Rohini and that a notice had also been issued to the Branch Manager RBL Bank to provide the account opening form of the petitioner and that the admitted signatures of the complainant had been obtained from the SBI Bank, Noida Branch and admitted signatures of Alok Vats had been obtained from the HDFC Bank, Noida UP and that the specimen signatures of the petitioner and the complainant were also obtained and all were sent to the FSL, Rohini, for examination. The stamp paper vendor Sanjay Upadhyaye was also examined by the investigating agency and a copy of the stamp papers sale register was obtained from him.

35. During the course of submissions that were made on behalf of the petitioner, reliance was also placed on the verdict of this Court in Prem Prakash Choudhary v. State ; 2018 SCC Online Del 6764 in which it was observed to the effect:

"15. In the instant case, assuming that the allegations against the petitioner are correct, at best, a case of consent of the complainant having been obtained on the pretext of marriage would be made out. It may also be noticed that FIR has been lodged on 28.12.2017 relating to incidents, which allegedly occurred as far back as in April, 2016. The complainant alleges to have gone on a sightseeing trip to Kangra in January 2016. The complainant is alleged to have continued her relationship with the Petitioner even after the alleged incident of giving an intoxicant in Soup. The complainant does not deny having written the note on 15.10.2017, wherein the alleged incident of petitioner giving intoxicant in a soup is stated to have happened in January 2016 in Kangra. Though the contention is that the note was written on the dictation of a police officer, there is no such mention in the FIR which is lodged on 28.12.2017 and further no complaint about the same was made till 22.01.2018 after the first listing of this petition.

16. Further, the case of the prosecution that consent of the complainant for marriage was obtained by misrepresentation or on the guise of marriage would be established by the complainant entering into the witness box - prosecution leading appropriate evidence for which no custodial interrogation or consequent recovery is required to

be made,"

and the accused therein was allowed to be released on anticipatory bail subject to conditions as imposed.

36. Reliance was also placed on behalf of the petitioner on the verdict of the High Court of Judicature of Bombay in *Akshay Manoj Jaisinghani v. The State of Maharashtra*; Bail Application No. 2221/2016 wherein it was observed to the effect:

"Only because two individuals are sexually involved with each other, it is not compulsory for them to marry. Initially, a boy and a girl genuinely may want to marry and are true to their emotions and establish sexual relationship, however, after some time, they may find that they are not mentally or physically compatible and one decides to withdraw from the relationship. Under such circumstances, nobody can compel these two persons to marry only because they had sexual relationship. It is necessary to have a healthy, objective and legal approach towards these incidents. There may be moral bonding between the two persons when they indulge into sexual activities with promise to marry and it is also a fact that ultimately women only can remain pregnant and therefore, she suffers more than the man. However, in law this cannot be labeled in any manner as a rape."

The applicant in this case was allowed to be released on bail subject to the conditions imposed.

37. Reliance was also placed on behalf of the petitioner on the verdict of this Court in *Ritanshu Delory v. State*; Bail Appln No. 1439/2016 wherein it was observed to the effect:

"4. The petitioner is aged around 25 years; the prosecutrix was major on the day of occurrence. Physical relations took place with her consent on several occasions albeit on the alleged promise to marry. When the marriage did not take place, the prosecutrix lodged the FIR in question. It is relevant to note that earlier friendship had continued from 2008 - 2011. When the marriage between the prosecutrix and the petitioner did not occur, realising her mistake, the complainant purportedly snapped the relationship. Again in 2014, the friendship developed between the two and the complainant established physical relation with consent allegedly on promise to marry. Apparently, the prosecutrix was aware of the consequence of her act. After being allegedly befooled from 2008 - 2011, when the petitioner did not come forward to marry her, there was no compelling reasons for her to trust the petitioner again and to establish physical relation in 2014 on the alleged promise to marry."

38. Reliance was also placed on behalf of the petitioner on the verdict of the High Court of Judicature at Bombay in *Tejas Udaykumar Sarvaiya v. The State of Maharashtra & Ors.*; 2016 SCC Online Bom 6347 wherein there was reference made to the verdict of the Supreme Court in *Tilak Raj v. State of Himachal Pradesh*; reported in 2016 SCC Online SC 11 wherein it was observed to the effect:

"20. The evidence as a whole including FIR, testimony of prosecutrix and MLC report prepared by medical practitioner clearly indicate that the story of prosecutrix regarding sexual intercourse on false pretext of marrying her is concocted and not believable. In fact, the said act of the Appellant seems to be consensual in nature. The trial court has rightly held thus:

"23. If the story set up by the prosecutrix herself in the court is to be believed, it does come to the fore that the two were in a relationship and she well knew that the accused was duping her throughout. Per the prosecutrix, she had not succumbed to the proposal of the accused. Having allowed access to the accused to her residential quarter, so much so, even having allowed him to stay overnight, she knew the likely outcome of her reaction. Seeing the age of the prosecutrix which is around 40 years, it can be easily inferred that she knew what could be the consequences of allowing a male friend into her bed room at night.

24. The entire circumstances discussed above and which have come to the fore from the testimony of none else but the prosecutrix, it cannot be said that the sexual intercourse was without her consent. The act seems to be consensual in nature.""

39. Reliance was also placed on behalf of the petitioner on the verdict of this Court in Rohit Chauhan v. State of NCT of Delhi; 2013 SCC online Del 2106 "14. Undoubtedly there is a manifold increase in the crime concerning rapes, but all the rape cases which are filed have their own individual story and factual matrix. While most of the cases may be genuine, wherein the girl is a victim of this horrifying crime, or has been forced, blackmailed, threatened to enter into physical relationship with a male on the false pretext of marriage with the sole intent to physically exploit the girl but there may be cases where both persons out of their own will and choice, develop a physical relationship. Many of the cases are being reported by those women who have consensual physical relationship with a man but when the relationship breaks due to one or the other reason, the women use the law as a weapon for vengeance and personal vendetta to extort money and sometimes even to force the boy to get married to her. Out of anger and frustration, they tend to convert such consensual sex as an incident of rape, defeating the very purpose of the provision. There is a clear demarcation between rape and consensual sex and in cases where such controversies are involved, the court must very cautiously examine the intentions of both the individuals involved and to check if even the girl on the other hand is genuine or had malafide motives. Cases like these not only make mockery of the sacred institution of marriage but also inflate the statistics of rape cases which further deprecates our own society.

15. In the facts of the present case, here is a complainant who appears to be quite an ultra-

modern lady with an open outlook towards life, enjoying alcohol in the company of men which is evident from the photographs placed on record, which have not been denied by the prosecutrix present in court. She does not appear to be such a vulnerable lady that she would not raise her voice on being immensely exploited over such a long period of time. As per the prosecutrix, she had a physical relationship with the petitioner for the last more than 2 ½ years and it is not just a single

act of sharing physical intimacy but the same continued for almost a long period of three years. There lies a possibility that the petitioner might have then refused to marry the prosecutrix and this refusal on the part of the petitioner gave a serious jolt to the prosecutrix who then with the help of police, solemnized the marriage with him, in the wee hours of the night when petitioner was in his casual apparels(track suit). It is only on 30.01.2013, that the complainant raised her voice for the first time and made allegations of rape against the petitioner. It is an admitted case that the said marriage ultimately did not consummate as the complainant was never brought to the matrimonial home and the petitioner has already filed a civil suit to seek decree of declaration for declaring the said marriage as null and void."

it was also observed vide this verdict to the effect that:

"17.It is a settled position of law, that every case is to be dealt based on its individual factual matrix and no set principle or straight jacket formula can be applied specifically while dealing with bail matters where only prima facie view can be taken to appreciate the facts in a given case."

40. Reliance was also placed on behalf of the petitioner on the verdict in Arif Iqbal @ Imran v. State; 2009 SCC Online Del 3561. The observations therein are to the effect:

"Without expressing any view on the merits of the case, it is quite apparent from the contents of some of the letters placed by the petitioner on record that the prosecutrix was deeply in love with the petitioner . In one of the letters, the prosecutrix has expressed her desire to come close to the petitioner and she also expressed her desire to embrace him. In another letter she even expressed her desire to have a child from the petitioner with the same name and to have the company of the petitioner for her entire life. It is not in dispute that the petitioner had physical relations with the prosecutrix not at any strange place but at the residence of the prosecutrix itself. In her madness for love with the petitioner, the prosecutrix went to the extent of administering intoxicating pills to her family members to induce them to go in fast and deep sleep and during which period the petitioner had sex with the prosecutrix. No doubt the prosecutrix has alleged that she allowed the petitioner to have sex with her because of the false promise of marriage extended by the petitioner but in my view mere false promise of marriage should not have prompted the prosecutrix to establish physical relationship with the petitioner."

41. Reliance was also placed on behalf of the petitioner on the verdict of the Supreme Court in Vinod Kumar v. State of Kerala; (2014) 5 Supreme Court Cases 678 to contend inter alia that there were sexual relations between the accused and the prosecutrix with the knowledge of the prosecutrix and that the accused was already a married man, as in the instant case, the physical relations between them would have to be held to be consensual and not rape.

42. Reliance is placed on behalf of the petitioner on the verdict of the Supreme Court in Siddharam Sattlingappa Mhetre v. State of Maharashtra; (2011) 1 SCC 694 to contend that in a case where the

Court is of a considered view that the accused has joined the investigation and he is fully cooperating with the investigating agency and is not likely to abscond, in that event, custodial interrogation should be avoided, and anticipatory bail should be granted and the Hon ble Supreme Court laid down the following factors and parameters to be taken into consideration while dealing with the anticipatory bail:

"112. The following factors and parameters can be taken into consideration while dealing with the anticipatory bail:

- i. The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;
- ii. The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence;
- iii. The possibility of the applicant to flee from justice; iv. The possibility of the accused's likelihood to repeat similar or the other offences.
- v. Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her.
- vi. Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people.
- vii. The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role of the accused in the case. The cases in which accused is implicated with the help of sections 34 and 149 of the Indian Penal Code, the court should consider with even greater care and caution because over implication in the cases is a matter of common knowledge and concern;
- viii. While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors namely, no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused;
- ix. The court to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;
- x. Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail."

it was also laid down by the Supreme Court in this case to the effect:

"113. Arrest should be the last option and it should be restricted to those exceptional cases where arresting the accused is imperative in the facts and circumstances of that case. The court must carefully examine the entire available record and particularly the allegations which have been directly attributed to the accused and these allegations are corroborated by other material and circumstances on record.

114. These are some of the factors which should be taken into consideration while deciding the anticipatory bail applications. These factors are by no means exhaustive but they are only illustrative in nature because it is difficult to clearly visualize all situations and circumstances in which a person may pray for anticipatory bail. If a wise discretion is exercised by the concerned judge, after consideration of entire material on record then most of the grievances in favour of grant of or refusal of bail will be taken care of. The legislature in its wisdom has entrusted the power to exercise this jurisdiction only to the judges of the superior courts. In consonance with the legislative intention we should accept the fact that the discretion would be properly exercised. In any event, the option of approaching the superior court against the court of Sessions or the High Court is always available."

43. Reliance was also placed on behalf of the petitioner on the verdict of this Court in Sharad Kumar Aggarwal v. State (2012) 194 DLT 489 to contend that where the allegations made against the accused require an analysis at the stage of investigation itself, the same is an aspect which necessarily needs evidence and the relevance of custodial interrogation would require consideration.

44. Reliance was also placed on behalf of the petitioner on the verdict of the Hon ble Supreme Court in Shiva Shankar @ Shiva v. State of Karnataka; in Crl.Appeal No. 504/2018 vide which the appeal was allowed vide order dated 6.4.2018 of the Hon ble Supreme Court to contend that where the accused and the prosecutrix had lived together like a married couple, and the sexual intercourse had lasted over a period of time, it was observed to the effect that especially in the face of the complainant s own allegations of their living together (though in that case as man and wife), cannot be termed to be a case of „rape .

45. On behalf of the prosecutrix, reliance was placed on the verdict of the Supreme Court in Yedla Srinivasa Rao v. State of Andhra Pradesh-29.9.2006, the verdict of Gaurav Shukla v. State 15.10.2015 in Bail Appln. No.1755/2015 to contend that facts thereby are pari materia to the facts of the instant case. Reliance was also placed on behalf of the prosecutrix on the verdict of this Court in Karan Girotra v. State and Anr. Bail Appln.977/2011 dated 8.5.2012 to contend that the allegations against the petitioner and the severity of the charges against him did not get lessened by the prosecutrix having fallen in love with the petitioner. Reliance was also placed on behalf of the prosecutrix on the verdict of Nikhil Parasar v. State (Govt. of NCT of Delhi); Bail Appln. No.1745/2009 to contend that where since the very inception of the making of the promise, the accused did not entertain the intention of the marriage and the promise to marry held was a mere hoax, the consent ostensibly given by the victim can be held to be of no avail.

46. On behalf of the State it was contended by the learned APP that the custodial interrogation of the applicant was required to ascertain the facts of the case and that there was a likelihood of the petitioner fleeing from justice and tampering with the evidence, if released on anticipatory bail.

ANALYSIS

47. On a consideration of the rival submissions put forth on behalf of either side, it is essential to observe that the FIR in the instant case is indicated to have been registered on 21.05.2017 in relation to the allegations of alleged rape on the prosecutrix by the petitioner during the period 07.03.2017 to 30.04.2017. As per the investigation conducted, a settlement agreement was also executed between the petitioner and the prosecutrix on 25.04.2017 pursuant to which a sum of Rs.4 lakhs vide a post dated cheque bearing no. 000010 Dt. 23.05.17 drawn on the RBL Bank was also issued to the prosecutrix by the petitioner in relation to part of the settlement amount of Rs.31 lakhs to be paid to her, of which a sum of Rs.4 lakhs was also duly encashed in the account of the prosecutrix.

48. The FIR and the statement under Section 164 of the Cr.P.C., 1973 indicate that the petitioner is already a married man with children and the prosecutrix has initially shared her room with the petitioner since 03.03.2017 qua which she stated through the FIR that that was the day when the petitioner had come from Atlanta USA and had asked her to meet her at the Airport alone and that she had gone to the Airport with a bouquet and picked him up and he asked her to take him to his flat saying that he wanted to go for a wedding and that she too should accompany him and that they had taken photographs of the wedding whereafter, the petitioner stayed in her room and she asked him the next day to go from the room when the petitioner told him that he was searching for a flat and would shift in the same and she had alongwith the petitioner had been in search of the flat and that the petitioner had stated that rather than living with his family members he would live somewhere close to her but that they could not find the place which appeared to be a ploy of the petitioner and thereafter the petitioner started living with her and kept assuring her of marriage and continued to make physical relations with her and started utilizing her debit card and cash and whenever she objected, he used to make her quiet saying that he would marry her. These assertions in the FIR and the averments made in the statement under Section 164 of the Cr.P.C., 1973 dated 09.06.2017 of the prosecutrix indicate that on 13.02.2017, the prosecutrix accompanied the petitioner to the Wave Mall, Sector- 18, Noida to see Jolly LLB-2 qua which the tickets were purchased from her SIM Card and on the morning of 14.02.2017, the petitioner wished the prosecutrix a Valentine's day and in the afternoon telephoned her and informed her that he was leaving for the USA that night and asked her to meet and she told him that she would meet in the evening and she was then studying and then she went to meet him at Sector-18, Noida in the evening when he gave her a bouquet and chocolates, told her that she was a very nice girl and offered to marry her to which she stated that her family members would not agree and he stated that he would make him capable and then her parents would not disagree to the match and he went to leave her at the house and thereafter went to the USA and thereafter they continued with their conversations and on 04.03.2017, the petitioner had to come to Delhi and he sent his ticket through a WhatsApp to her asked her to come with flowers at the Airport to pick him up and she went to pick him up and from that time till the end of April, the petitioner stayed at her room and at that time, her sister had gone home and the petitioner told her that he would marry her and had asked her for

physical relations with her and when she refused, he told her that he would marry her and then gave her some pills and had physical relations with her daily and also gave her several vitamins which were there with her at her house even at the time when she made her statement, that he made her run everyday at the Amitabh Park and brought her a watch, got her passport made told her that he would have a Court marriage with her and would take her to USA but did nothing of the sort and he also took Rs.1,500/- from her ATM for the passport fee and went to USA towards the end of April informing her that there was a Court hearing and told her that he would come back and marry her but did not return and that she informed him in the month of May that she had not had her periods and he asked her to wait till the 10th and told her that a man would come with the pregnancy test kit and the man came with the same and she checked and the test proved positive about which she informed the petitioner who asked her not to worry and told her that he would marry but he did not come back and asked her to take 4 pills out of the „72 pill which he had given her which she consumed and from that time her bleeding did not stop and he told her that he would come on the 31st of May and would get engaged to her but did not come and that she met Mr. Alok Vats and told him about everything including the pregnancy and that Mr. Alok Vats told her that Bhushan, i.e., the petitioner herein was a bad man and that he had done the same with several girls and had taken his money as well amounting to Rs. 4 ½ lakhs and he made her talk to Bhushan, i.e., the petitioner on his phone and that the petitioner told her that he would come and that she should get ready for engagement and that Alok Vats took her to a lawyer and that the lawyer gave her a cheque of Rs.4 lakhs and a paper which was in English and she was made to sign on the same and the lawyer told her that it was mentioned in the said document that till the time the petitioner came, she should not get an FIR registered and that she would also return all his articles and that both petitioner and she would give time to each other. As per the statement under Section 164 of the Cr.P.C., 1973, there were some articles of the petitioner in her room and she stated further that when the petitioner learnt of her miscarriage, he refused to come and told her that he was telling her lies and on learning of her miscarriage, he also got the payment of 2 to 3 cheques stopped and also refused to marry her and that Mr. Alok Vats SMSsed her and compelled her to return the articles of the petitioner and that the petitioner also threatened to kill her if she made any complaint and Alok Vats continued to pressurize her that she should not make any complaint and she thus stated that both the petitioner and Alok Vats had conspired in the commission of the offences with her. She further stated that one day, the petitioner had also beaten her a lot on putting sugar because of which her shoulder was still painning and that she apprehended danger to her life as Alok Vats had telephoned her even one day prior to the date 09.06.2017 not to make a complaint and that the petitioner had also told her that if she made a complaint, he could purchase the police, lawyer and the Judge.

49. Through the statement under Section 164 of the Cr.P.C., 1973 also, it is indicated that for the period 04.03.2017 till the end of May, 2017, the petitioner and the prosecutrix have lived together at the room of the prosecutrix and have indulged in physical relations and these physical relations were entered into between the petitioner and the prosecutrix after the petitioner inter alia consumed pills as allegedly given to her by the petitioner. The prosecutrix contends that she entered into the said physical relations with the petitioner because of his inducement that he would marry her which he did not do and after he learnt of the miscarriage, he stopped meeting her and threatened her not to lodge a complaint as well with the police. There are photographs placed on the record which have been filed by the prosecutrix herself alongwith documents filed on 13.03.2018 showing the

prosecutrix and the petitioner with a bouquet and showing the prosecutrix and the petitioner close together in a wedding. Placed on record are also the transcripts of conversations on WhatsApp between the petitioner and the prosecutrix which indicate the development of a relationship between the petitioner and the prosecutrix and their concerns for each other. It is also essential to observe that even prior to the registration of the FIR in the instant case on 21.05.2017, the petitioner had also made a complaint on 18.05.2017 to the SHO, PS Sector-20 Gautam Budh Nagar against the prosecutrix and had also filed an application under Section 156(3) of the Cr.P.C., 1973 against the prosecutrix and her associates for the registration of the FIR in the Court of CJM, Gautam Budh Nagar in relation to which Crime Case No. 0762 dated 06.07.2017 under Sections 388/420/406/467/468/471/120-B of the Indian Penal Code, 1860, PS Sector-20 Noida is indicated to have been registered.

50. Taking all these aspects into account and the age of the prosecutrix being 25 years and as the prosecutrix apparently appears to be educated, the aspect as to whether the physical relations between the petitioner and the prosecutrix which continued from the date 04.03.2017 till the end of April, 2017 were due to any inducement for marriage given by the petitioner or not, are matters which can only be determined on trial. The factum that the prosecutrix chose to get the cheque bearing no. 000010 of Rs.4 lakhs encashed and also signed the settlement agreement dated 23.05.2017 between herself and the petitioner (which of course the petitioner has claimed that she has not signed the same, though the status report submitted by the police also states to the effect that as per the witnesses who signed the settlement agreement, the complainant had signed on the same) all bring forth prima facie that the contentions of the petitioner, that the relations between the petitioner and the prosecutrix were consensual can only be ascertained through trial, inasmuch as per the FIR, the petitioner has informed the prosecutrix on 14.02.2017 that he was a divorcee as was also stated by the prosecutrix through her statement under Section 164 Cr.P.C., 1973, though, in this statement apparently the information of the divorce was known to the prosecutrix much prior to the date 14.02.2017, i.e., on 07.02.2017 when the petitioner also allegedly stated to the prosecutrix that he was a divorcee and was searching for a friend. Significantly, the FIR has also stated that on 13.02.2017, the petitioner had asked the prosecutrix to accompany him for a movie and she had accompanied the petitioner after having repeated WhatsApp chats and calls from the night of 07.02.2017 onwards and it is indicated through the FIR that the prosecutrix went to see the movie with the petitioner apparently voluntarily and as per the FIR during the course of the movie the petitioner caught hold of her hand which the prosecutrix did not approve of and thus pushed his hand away which is not stated through the statement of the prosecutrix under Section 164 Cr.P.C., 1973, but despite this act of the petitioner allegedly made on 13.02.2017, the prosecutrix nevertheless continued with her relations with the petitioner even on 14.02.2017 and repeatedly thereafter to the extent of indulging into sexual intercourse with the petitioner and also consuming abortion pills which she however claims were given to her by the petitioner.

51. It is essential to observe that the prosecutrix is aged 25 years and does not appear to be a gullible woman and states that at the time when the petitioner lived at her residence from 04.03.2017 till the end of April, 2017, the petitioner and the prosecutrix virtually had regular physical intercourse and the prosecutrix also states in her statement under Section 164 Cr.P.C., 1973 that at that time when the petitioner stayed with her in her home, her sister had gone to her house. The petitioner as per

the status report dated 07.03.2017 is a US citizen. The specimen signatures and admitted signatures of the petitioner and of the complainant and of the witness Alok Vats and the witness Yusuf whose signatures are stated to be on the settlement agreement dated 23.05.2017 attested on 24.05.2017 between the petitioner and the prosecutrix, as per the said status report dated 07.03.2017 have been taken and have been sent to the FSL, Rohini for comparison. The status report dated 07.03.2017, indicates that the petitioner holds a USA passport bearing No.529312815 with corresponding OCI card No.A2460851 which was updated on 27.10.2016 by Consulate General of India Atlanta, UK. The status report dated 07.03.2017 under signatures of Inspector Jeewat Ram Parmar, DIU, East also states that the photocopy of the mobile phone chat between the petitioner and the prosecutrix has been made available to the investigation agency and that the mobile instrument of the petitioner has also been seized by Inspector Ram Bir Singh on 18.01.2018.

52. The status report dated 07.03.2017 states that the custodial interrogation of the petitioner was required to find out the facts of the case and that if anticipatory bail/ travel permission was granted to the petitioner, he may not come back to India and he can win over the witnesses by way of threatening or pressurizing them. The status report dated 16.03.2018 under the signatures of Inspector Jeewat Ram Parmar, DIU East stated that the admitted signatures of the complainant obtained from State Bank of India, Branch Noida UP and admitted signatures of Alok Vats obtained from HDFC Bank, Noida, UP have been taken and that the original settlement document dated 23.05.2017 has been sent to the Director, FSL, Rohini and that this mobile phone instrument of the prosecutrix with the SIM has already been seized on 10.03.2018 and has also been sent to the Director, FSL, Rohini for examination and that the stamp papers seller Shri Sanjay Upadhyay has also been examined on 10.03.2018 and copy of stamp papers sale register has been obtained and that the CDR and CAF were in the process being obtained from the service provider of the mobile phone.

53. Reliance placed on behalf of the prosecutrix on the verdicts in:

"Yedla Srinivasa Rao Vs. State of Andhra Pradesh" in Appeal (Crl.) No.1369/2004 decided on 29.09.2006 (supra), on verdict of the Hon ble Supreme Court "Gaurav Shukla Vs. State (Delhi High Court)- 15/10/2015 in Bail Appln. No.1755/2015, "Karan Girotra Vs. State and Anr (Delhi High Court)- 08/05/2012 in Bail Appln. No.977/2011 & "Nikhil Parasar Vs. State Govt. of NCT of Delhi" (Delhi High Court)-01/02/2010 in Bail Appln. No.1745/2009,

- are on the basis of the facts and circumstances of the said cases and it cannot be overlooked that in the case "Yedla Srinivasa Rao Vs. State of Andhra Pradesh"- 29/09/2006 (Supreme Court of India), the prosecutrix was 16 years of age and a rustic whereas in the instant case, the prosecutrix is 25 years of age and from the photographs placed by the prosecutrix herself with the petitioner and the conversations between her and the petitioner, - does not appear prima facie to be naive or gullible.

54. The contention raised on behalf of the prosecutrix and the State is to the effect that the physical relations between the petitioner and the prosecutrix were due to the false communication made by the petitioner to the prosecutrix that he would marry her and which he has not chosen to do so and that the petitioner is not entitled to anticipatory bail, it having been submitted that there was no intent to marry the prosecutrix at all by the petitioner as his family lives abroad and he is a citizen of USA. The prosecutrix has sought to contend that after the petitioner learnt of her miscarriage, he stopped contact with her virtually. The WhatsApp conversations between the petitioner and the prosecutrix placed on record by the prosecutrix herself extend to the date 18.05.2017 and such conversations placed on record by the petitioner extend to the date 04.07.2017.

55. Taking the totality of the circumstances of the case into account, as observed hereinabove the aspect of the physical relations between the petitioner and the prosecutrix being consensual or otherwise being a matter of trial and the aspect as to whether the prosecutrix was aware that the petitioner was a married man or not and that the prosecutrix has also chosen to get a cheque of Rs.4 lakhs encashed, inasmuch as the record indicates that the petitioner is a US citizen with his family and business, this Court is of the considered view that in the circumstances of the case, it is considered appropriate to release the petitioner on anticipatory bail.

56. The petitioner thus, in the event of arrest is allowed to be released on anticipatory bail on his filing a bail bond in the sum of Rs.5 lakhs with two sureties of the like amount to the satisfaction of the learned CMM, (Central) subject to the further conditions that the petitioner shall not tamper with the evidence in any manner, shall not threaten the witnesses neither himself nor through any associate or any other person and shall not leave the city nor the country till the completion of the investigation and submission of the charge-sheet, whereafter travel of the petitioner, if any, an NRI both in India and abroad, if any moved shall subject to the applicant seeking requisite permission before the learned Trial Court where the charge-sheet, i.e. the police report under Section 173 of the Cr.P.C., 1973 is filed.

57. The application is disposed of accordingly.

ANU MALHOTRA, J JULY 11, 2018/sv/NC