

In The Court Of District & Sessions Judge, East Delhi
Bail Application No. _____ / 2017

In The Matter Of:-

Mr. Shyam Sunder Sharma

.....Petitioner

V E R S U S

The State

..... Respondent

FIR No: 0493 of 2017 (Dated: 28/08/2017)

PS: New Ashok Nagar

US: 376/506/323 OF IPC

District-East Delhi

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PETITIONER

[In Judicial Custody]

THROUGH

SUSHIL KR. SHARMA, ADVOCATE,
(Enrolment No.-D/55/1995)
(COUNSEL FOR THE PETITIONER)
877, LAWYERS' CHAMBERS,
SAKET COURTS, NEW DELHI- 110017
[E-mail: hellocounsel@gmail.com](mailto:hellocounsel@gmail.com)
Mob. No.:-9818165785

PLACE: Delhi

DATED: 11.09.2017.

In The Court Of District & Sessions Judge, East Delhi
Bail Application No. _____ /2017

In The Matter Of:-

Mr. Shyam Sunder Sharma
S/o Shri Mangal Sharma,
R/o 119D/ Pocket-6, MIG Flats,
Mayur Vihar-III,
Delhi- 110096.

Also At:
32M, Pocket-2, EHS, MIG Flats,
Mayur Vihar-III,
Delhi- 110096.

.....Petitioner

V E R S U S

The State
Through
The SHO,
PS-New Ashok Nagar,
New Delhi (District- East)

..... Respondent

FIR No: 0493 of 2017 (Dated: 28/08/2017)

PS: New Ashok Nagar

US: 376/506/323 OF IPC

District-East Delhi

Petition Under Section 439 Of The Criminal Procedure Code, 1973,
For Grant Of Bail

MOST RESPECTFULLY SUBMITTED AS UNDER:-

1. That the Petitioner is a law abiding Citizen. He however, has been falsely implicated by the Police by lodging against him completely vexatious, false, frivolous and baseless FIR. The Copy of the FIR is annexed herewith this Petition as an **Annexure-P-1**.
2. That the Petitioner was arrested by the Police on **28.08.2017**. He had fully cooperated in the investigations and consequently the Police did not seek his Police Custody (PC), and consequently, he was sent to the judicial custody (JC) on **29.08.2017**. He is, therefore, behind the bars for nearly **14 days**.
3. The Petitioner and the Complainant are both married persons. The Complainant got married in **2008**. Both are merely 10th class/ 12th class pass. Both are known to each other for quite a long time, i.e. long before 2008, as they were neighbors in Patpatganj Village, Delhi prior to

the marriage of the Complainant. After marriage, the Complainant shifted to Kolkata and the Petitioner began to live in Mayur Vihar-III, Delhi-96. The family of the Complainant had already shifted to Khora Colony, Ghaziabad, UP, which is hardly about 2 Km. from the residence/office of the Petitioner, the alleged place of occurrence.

4. That in the year, **2010**, the Complainant got back to Delhi and began to live in in a rented flat in Pocket-2, EHS, MIG Flats, Mayur Vihar-III, Delhi-96. The husband of the Complaint began to work with the Petitioner. The office/flat of the Petitioner was/is also in the same colony at 32M, Pocket-2, EHS, MIG Flats, Mayur Vihar-III, Delhi-96.
5. That in the year, **2012**, the Petitioner housed the Complainant in one of the floor of his office/flat at 32M, Pocket-2, EHS, MIG Flats, Mayur Vihar-III, Delhi-96.
6. That the allegations in the FIR are as follows:

Allegations in the FIR:

7. That the Petitioner had made a film/video of the Complainant while she was taking bath in the bathroom of his office/flat and subsequently made physical relationship with her by threatening her that either she should obey, or else he would make her **bathing video** viral. The Petitioner also threatened the Complainant not to tell about her relationship with him to anyone or else he would defame her by revealing to all that she had a **boyfriend** before her marriage.
8. That the Petitioner would make physical relations with her repeatedly on the same pretext that he would be defaming her by revealing to all that she had a boyfriend. While being intimate, the Petitioner made **Several other videos** and threatened to destroy her if she ever told about the same to anyone. When she opposed the Petitioner, he had several times beaten her and her children and tried to set her house on fire.
9. That the Petitioner had married the Complainant in a closed room and had made a **video of the marriage** too.
10. That the Petitioner had a bad eye on the **sister** of the Complainant.

11. That the Petitioner and the Complainant had physical relationship between the period **2012** to **2017**. On getting fed-up, the Complainant ran away from the flat of the Petitioner on **26.02.2017**.

Submissions Vis-a-Vis The Allegations Levelled In The FIR:

12. That on the alleged threat of **making bathing video** viral the Petitioner would like to state that the Petitioner has not made any such video nor has he ever had any camera in his bathroom to do that. This averment of the Petitioner gets strengthened from the fact that the Complainant has not specified the day, or date, or time when she took the alleged bath in the bathroom of the Petitioner. She also fails to specify as to when she first time became physically intimate with the Petitioner.

It is submitted that Complainant and the Petitioner came in contact with each other quite naturally, they being family friends and known to each other for a very long time. No one compelled, or induced or pressurized anyone. Even otherwise, it was an utterly insufficient/superficial reasoning, which the Complainant has allegedly given to get physically intimate with the Petitioner. It is beyond comprehension as to how a bathing video could bring shame to her and her family, as also what stopped her from complaining to the Police if it was so. It happens almost every other day that the females get such miscreants sent behind the bars for secretly video-graphing/photographing them. Not even a rustic and totally uneducated female would get physically intimate owing to the alleged threat.

13. That as for **several other videos**, the Petitioner would like to state that the same were not made at the instance of the Petitioner. On the contrary, it was the Complainant who had an acute habit of getting herself filmed/video-graphed/photographed while being nude. It would be relevant to mention herein that the Complainant was so much fond of her nudity that she would send the Petitioner her nude videos on his phone/whatsApp etc. not on one occasion or two, but on numerous occasions. Her allegations about a singular instance of video-graphing her in the bathroom and then she getting blackmailed by the Petitioner holds no ground, the same being false, baseless and concocted. The Petitioner is filing along with this application numerous photographs

fully substantiating the averments of the Petitioner. The said Photographs, Videos, Video-Callings are self-explanatory and speak volumes about the comfort and coziness which the two enjoyed. The said photographs are annexed herewith this Petition as **Annexure P-2 (Colly.)**

The Petitioner has also handed over to the Police one pen-drive containing numerous Photographs, Videos, Video-Callings, Phone Calls, etc. involving the Complainant and the Petitioner. He has also given a copy of the said pen-drive to his Counsel. The contents of the said pen-drive can be ascertained from the Police. The Counsel of the Petitioner also has instructions to place the copy of the said pen-drive on the record of this Hon'ble Court subject to the permission of this Hon'ble Court.

14. That on the allegation of the alleged **marriage**, it is stated that it was the Complainant who had forced the Petitioner to marry at Kalkaji Temple, New Delhi, as also took an undertaking from him that he will get the alleged marriage registered. It was she who had got a photo of the alleged marriage made at the a photo studio at Kalkaji Temple only. She also procured an undertaking from the Petitioner that he will get the alleged marriage registered in the Court. She procured the said undertaking from the petitioner by blackmailing him that her third child was fathered by him and not by her husband, saying in her won words, "HAM DONON KE BEECH MAIN EK BETA PAIDA HUA, (JO) HAMARE PYAR KI NISHANI HAI.". At the time of marriage, the Petitioner had bought for the Complainant a gold Maang-Tika and a diamond nose pin. The said undertaking is annexed herewith this Petition as **Annexure P-3.**
15. That as for her allegation that Petitioner had a bad eye on her **sister** too, the Petitioner would state that this allegation is concocted, false, and baseless, and the same is leveled belatedly as a result of an afterthought, with malafide intentions and ulterior motives, just to falsely implicate the Petitioner one way or the other. The sister of the Complainant, named, Ms. Soni Kumar, was continuously/ permanently living with her for the last about two and a half (2&½) years. While living with the Complainant, her sister was studying in the School Of Open Learning and therefore would stay in home almost the whole day, as she had nowhere to go. Her

sister was there with her even when Complainant had left the flat of the Petitioner on 26.02.2017. It is totally incomprehensible that the Complainant was facing the kind of situation she has alleged in the FIR and she chose not to complain about that to her sister who was living with her 24x7 for such a long period, nor did she tell anything to her husband. She also chose not to tell anything to her mother or other family members who lived at a stone's throw distance (Hardly 2 Km from her). Further, she also did not tell anything to her neighbor living in the other floors of the same building/Flat at 32M, Pocket-2, EHS, MIG Flats, Mayur Vihar-III, Delhi-96. This allegation further establishes as to how desperate the Complainant is to falsely implicate the Petitioner in the name of her sister too. The copy of a Fee-Receipt of the School Of Open Learning, dated-25.08.2014, containing the address of the office/flat of the Petitioner is filed along with this Petition as an **Annexure -P-4**.

Other Pleas And Submissions:

16. That the Complainant would compel the Petitioner to **spend a huge money** on her, her husband, her family and her other relatives. The Petitioner would purchase for her garments, jewelery and other household items, like Mobile Sets, Washing Machine and Fridge, etc. She has so far taken from the Petitioner a jewellery worth Approx. Rs.1,25,000/- (Three Gold Chains, One diamond Nose-Pin, Two gold Rings). He paid her mobile bills, as also the school fees of her children, namely Master Jatin and Baby Nidhi Singh, studying in East Point School and Vanasthali Public School respectively, for the years 2014-2015 and 2015-16, by way of Cash and Cheque. A fraction of what the Petitioner had spent on the Complainant does reflect in the following table, which tells volumes about how much the Petitioner was spending on the Complainant, and her family members:

Date	Amount	Where the Amount Was Spent
08.04.2015	Rs.1,50,000/-	Shailesh Singh (The husband of the Complainant)
30.05.2015	Rs.19,732/-	Pankaj Electronics, towards the purchase of Washing Machine for the Complainant.

17.06.2015	Rs.2,00,000/-	Shailesh Singh (The husband of the Complainant)
20.07.2015	Rs.5,000/-	Sachin Kumar (The son of maternal uncle of the Complainant)
21.07.2015	Rs.2,500/-	Sandeep Kumar Singh (The brother of the husband of the Complainant)
29.07.2015	Rs.30,000/-	Shailesh Singh (The husband of the Complainant)
10.08.2015	Rs.5,000/-	Sandeep Kumar Singh (The brother of the husband of the Complainant)
27.08.2015	Rs.75,000/-	Shailesh Singh (The husband of the Complainant)
05.09.2015	Rs.5,000/-	Sandeep Kumar Singh (The brother of the husband of the Complainant)
10.09.2015	Rs.10,000/-	Neetu Singh (The Complainant)
08.10.2015	Rs.25,000/-	Shailesh Singh (The husband of the Complainant)
20.11.2015	Rs.10,000/-	Sandeep Kumar Singh (The brother of the husband of the Complainant)
30.12.2015	Rs.1,00,000/-	Shailesh Singh (The husband of the Complainant)
14.03.2016	Rs.1,50,000/-	Shailesh Singh (The husband of the Complainant)

This table clearly demonstrates that the Petitioner was spending on the Complainant and her family members a whopping sum running in lacs of rupees. The pattern of outflux of money from the accounts of the Petitioner in a span of merely 12 months leaves a lot of scope for speculations as to how much he should have spent on her during his relationship with the Complainant between the period 2012 to 2017. The Petitioner is filing the related bank statement of account of the Petitioner along with this Petition as **Annexure P-5 (Colly.)**.

17. That the Complainant has portrayed herself to be a victim and to the Petitioner, a tormentor. The material which he has handed over to the Police contains a video which clearly demonstrates that the things between the two were just opposite of what she has alleged. The

Complainant not only fully dominated the Petitioner, but she would also beat him. The Complainant is clearly seen in that video **slapping, shoving and rebuking** the Petitioner in his office.

18. That in the given Case, all was good between the Complainant and the Petitioner till the Petitioner was paying all her bills and fulfilling all her demands- acceptable or unacceptable. She however, walked in the Police Station and got a false FIR- U/S- 376, 506, 323 IPC registered, the minute the Petitioner failed to toe the line set by her.

That as averred in the preceding paras, the allegations of the Complainant are nothing but a bundle of blatant lies, the same being totally false, baseless and concocted. The Complainant has leveled the allegations with malafide intentions and ulterior motives, just to falsely implicate the Petitioner.

19. That besides and without prejudice to the above, **Delay in lodging the F.I.R.** is yet another strong plea in favor of the Petitioner. As per her own allegations, the Complainant remained in the relationship with the Petitioner between the period **2012** to **26.02.2017**. She however, stayed silent during this period despite the fact that her husband and her sister were living with her. Her whole family and relatives also stay and reside within the radius of 2 kms from her flat. Thereafter, as per her own allegations, she walked out of the relation by leaving the flat of the Petitioner on 26.02.2017. She offers no explanation as to what stopped her from getting the FIR lodged for about Six months, i.e. from **26.02.2017** to **28.08.2017**. The F.I.R was lodged on **28.08.2017**. An unexplained delay of over **Five years and six months** fully substantiates the version of the Petitioner that he has been falsely implicated in this Case.

20. That there is nothing which got to be further investigated in this matter. The investigation in this case is complete for all practical purposes.

21. That the Petitioner is a permanent resident of Delhi. He has his family residing permanently in Delhi and has deep roots in the society. There is no question of him fleeing from justice or absconding by any stretch of the imagination.

22. That the antecedents of the Petitioner are completely clean. He belongs to a respectable family. Prior to this, he has no FIR in his name, let alone any conviction in any criminal case.
23. That the Trial of the case would take a long time and keeping the Petitioner in Judicial Custody (JC) would not serve any fruitful purpose. On the contrary, his whole family will come on the road if his incarceration prolongs, he being the sole bread earner of his family, comprising of three school/college going children.
24. That the Petitioner undertakes not to tamper with the evidence in this case, nor to try and contact the Victims/Complaint in this case by any way and means.
25. That the Petitioner undertakes to attend the proceedings before the concerned Court regularly, as and when called upon to do so.
26. That the Petitioner further undertakes to abide by all the conditions which this Hon'ble court pleases to impose to enlarge him on bail.

PRAYER

It is therefore most respectfully prayed that this Hon'ble Court be pleased to enlarge the Petitioner on bail, subject to whatever conditions which this Hon'ble Court deemed fit in the facts and circumstances of this Case, and in the interest of justice.

Petitioner

[In Judicial Custody]

Through

SUSHIL KR. SHARMA, ADVOCATE,
(Enrolment No.-D/55/1995)
(COUNSEL FOR THE PETITIONER)
877, LAWYERS' CHAMBERS,
SAKET COURTS, NEW DELHI- 110017
[E-mail: hellocounsel@gmail.com](mailto:hellocounsel@gmail.com)
Mob. No.:-9818165785

PLACE: Delhi

DATED: 11.09.2017

In The Court Of Shri Pulatsya Pramachala, Special Judge (PC Act) CBI,
East, KKD, Delhi

Bail Application No. 1602 / 2017

In The Matter Of:-

Mr. Shyam Sunder Sharma

.....Petitioner

V E R S U S

The State

..... Respondent

FIR No: 0493 of 2017 (Dated: 28/08/2017)

PS: New Ashok Nagar

US: 376/506/323 OF IPC

District-East Delhi

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[List Of Additional Documents Filed On Behalf Of the Petitioner]

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PETITIONER

[In Judicial Custody]

THROUGH

SUSHIL KR. SHARMA, ADVOCATE,
(Enrolment No.-D/55/1995)
(COUNSEL FOR THE PETITIONER)
877, LAWYERS' CHAMBERS,
SAKET COURTS, NEW DELHI- 110017
[E-mail: hellocounsel@gmail.com](mailto:hellocounsel@gmail.com)
Mob. No.:-9818165785

PLACE: Delhi

DATED: 16.09.2017.

Indian Penal Code, 1860

CHAPTER IV : GENERAL EXCEPTIONS

Section-90. Consent known to be given under fear or misconception.- A consent is not such a consent as it intended by any section of this Code, if the consent is given by a person under fear of injury, or under a misconception of fact, and if the person doing the act knows, or has reason to believe, that the consent was given in consequence of such fear or misconception; or

Consent of insane person-

if the consent is given by a person who, from unsoundness of mind, or intoxication, is unable to understand the nature and consequence of that to which he gives his consent; or

Consent of child-

unless the contrary appears from the context, if the consent is given by a person who is under twelve years of age.

Chapter XVI: Of Offences Affecting The Human Body Sexual Offences

375. Rape.- A man is said to commit "rape" who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the six following descriptions:--

First.-Against her will.

Secondly.-Without her consent.

Thirdly.--With her consent, when her consent has been obtained by pulling her or any person in whom she is interested in fear of death or of hurt.

Fourthly.--With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

Fifthly.--With her consent, when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.

Sixthly.--With or without her consent, when she is under sixteen years of age.

Explanation.--Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.

Exception.--Sexual intercourse by a man with his own wife, the wife not being under fifteen years of age, is not rape.

Section-376. Punishment for rape.-(1) Whoever, except in the cases provided for by sub-section (1), commits rape shall be punished with imprisonment of either description for a term which shall not be less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable to fine unless the woman raped is his own wife and is not under twelve years of age, in which cases, he shall be punished with imprisonment of either description for a term which may extend to two years or with fine or with both:

Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than seven years.

(2) Whoever,--

(a) being a police officer commits rape-

(i) within the limits of the police station to which he is appointed; or

(ii) in the premises of any station house whether or not situated in the police station to which he is appointed; or

(iii) on a woman in his custody or in the custody of a police officer subordinate to him; or

(b) being a public servant, takes advantage of his official position and commits rape on a woman in his custody as such public servant or in the custody of a public servant subordinate to him; or

(c) being on the management or on the staff of a jail, remand home or other place of custody established by or under any law for the time being in force or of a woman's or children's institution takes advantage of his official position and commits rape on any inmate of such jail, remand home, place or institution; or

(d) being on the management or on the staff of a hospital, takes advantage of his official position and commits rape on a woman in that hospital; or

(e) commits rape on a woman knowing her to be pregnant; or

(f) commits rape on a woman when she is under twelve years of age; or

(g) commits gang rape,

shall be punished with rigorous imprisonment for a term which shall not be less than ten years but which may be for life and shall also be liable to fine:

Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment of either description for a term of less than ten years,

Explanation 1.--Where a woman is raped by one or more in a group of persons acting in furtherance of their common intention, each of the persons shall be deemed to have committed gang rape within the meaning of this sub-section.

Explanation 2.--"Women's or children's institution" means an institution, whether called an orphanage or a home for neglected woman or children or a widows' home or by any other name, which is established and maintained for the reception and care of woman or children.

Explanation 3.--"Hospital" means the precincts of the hospital and includes the precincts of any institution for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation.

Of Hurt

Section-323. Punishment for voluntarily causing hurt.- Whoever, except in the case provided for by section 334, voluntarily causes hurt, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

Chapter XXII: Of Criminal Intimidation, Insult And Annoyance

Section-506. Punishment for criminal intimidation.- Whoever commits, the offence of criminal intimidation shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both;

If threat be to cause death or grievous hurt, etc.-- and if the threat be to cause death or grievous hurt, or to cause the destruction of any property by fire, or to cause an offence punishable with death or imprisonment for life, or with imprisonment for a term which may extend to seven years, or to impute, unchastity to a woman, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.