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Gay man invokes Delhi HC ruling to get court relief

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Put in the dock by the wife of his gay partner, a merchant navy officer has invoked last year's landmark Delhi high court judgment legitimising consensual homosexual sex to seek a reprieve.

On February 16, 2009, Rohini Mathur, 37, had filed a first information report (FIR) with the Gamdevi police station charging her husband Anand, 40, a Peddar Road businessman, and his partner with several offences under the Criminal Procedure Code. These included unnatural sex (section 377), cruelty by husband and relatives (section 498A) and criminal intimidation. The couple have been married for 15 years and have a 7-year-old son.

Rohini alleged that Anand was a homosexual and was having sexual relations with his merchant navy officer partner, Rommel Fernandes. The Gamdevi police seized two CDs which allegedly incriminated the accused. Both Anand and Fernandes were granted anticipatory bail in the case.

On February 5, the Gamdevi police filed a 33-page chargesheet with the Girgaum metropolitan magistrate court. It includes statements of 13 witnesses, including Rohini, the psy-

chologist who counselled Mathur, the domestic helps in the house, and Rohini's parents. The police also attached medical examination reports indicating homosexual sex.

Rohini, in her complaint, said that she became aware about her husband's homosexual activities in 1998. Mathur then allegedly confessed to her that he acquired this "strange habit" in his teenage years. On her insistence, Mathur underwent counselling.

However, Rohini soon had the inkling that Anand continued to indulge in sexual activities with another man. In 2007, Mathur confessed before the counsellor that he had found a partner, Fernandes, from an internet site in 2006 and was having sexual relations with him.

On May 5, Fernandes' lawyer Vivek Kantawala filed a discharge application before the Girgaum metropolitan magistrate court, stating, "Invocation of Section 377 is no more a criminal act or criminal provision under which a prosecution can be launched against the Applicant No.2 (Fernandes)."

Besides, section 498A is only applicable to husband or relatives of husband, Kantawala argued in his application.

(NAMES CHANGED ON REQUEST)