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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
+ **BAIL APPLN. 311/2013**  
**ROHIT CHAUHAN**

..... Petitioner

Through Mr. B.S. Rana with Mr.TarunGahlot,  
Mr.VijenderBhardwaj and  
Mr. Satyam Sisodiya, Advs.

versus

**STATE NCT OF DELHI**

..... Respondent

Through Mr. Navin Sharma, APP for the State.  
Mr.MasroorAlam Khan, Adv. for the  
complainant.

**CORAM:**  
**HON'BLE MR. JUSTICE KAILASH GAMBHIR**

**ORDER**

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**22.05.2013**

1. By this application filed under Section 438 Cr.P.C. the petitioner seeks grant of anticipatory bail.
2. The petitioner herein is accused of committing the offence under Sections 376/506/328 IPC in FIR No. 39/2013 registered with PS Rani Bagh. As per the prosecuterix, Ms.Rupali Thakur it is alleged that she had an affair with the petitioner, RohitChauhan for the last 3 years and during this period the petitioner had physical intimacy with her on the promise that he would marry her.
3. As per the complainant, who is present in court, the petitioner took the

complainant to his house at Rishhi Nagar, Rani Baghon 14.2.2010 on the pretext of introducing her to his mother, but since there was no one present in his house, he forcibly had physical relationship with her. It is also the case of the prosecutrix, that when she tried to shout, then the petitioner daunted her that he would kill her and defame her and at the same time he asked her not to worry as he loved her and would marry her but if in case she discloses the said relationship to anyone then the petitioner would harm himself physically. It is also the case of the prosecutrix that the petitioner also gave certain pills to her so that she would not conceive. It is further alleged by the prosecutrix that the petitioner also threatened to kill her family members and to show her obscene videos to her parents and upload the same on 'YouTube', if she dared to refuse to maintain physical relations with him. It is also the case of the prosecutrix, that on 9.7.2012, the petitioner administered some drug in her cold drink, which she drank and again was forced to have physical relations with him. It is also the case of the prosecutrix that on 13.7.2012, she filed a complaint at Police Station, Shalimar Bagh which was later transferred to Police Station Rani Bagh, where the petitioner and his family members were called by the police and they gave assurance that they will arrange the marriage of the petitioner with the complainant only if the complainant withdraws the said complaint. As per the complainant, the marriage was solemnized at AryaSamajMandir,

HaritVihar, Burari, Delhi on 10<sup>th</sup> August, 2012, where the family of the petitioner i.e. his mother Kiran, brother Kitty, cousin brother Vishnu Yadav, petitioner's MassiPoonam, petitioner's other Massa and Massi were all present. It is also the case of the prosecutrix that after the solemnisation of the said marriage, the petitioner did not take her to his house even for a day and rather after two days of marriage, the petitioner and his family members took the prosecutrix to AryaSamajMandir, beat her and forcibly took her signatures on one paper for dissolving the said marriage. It is also the case of the prosecuterix that after the marriage, the petitioner and his family members visited her locality several times and abused her besides creating nuisance outside her house. It is also the case of the prosecuterix that her sister was also threatened whenever she used to go to her school. It is also the case of the prosecuterix that on 3.11.2012, she again made a complaint against the petitioner and his family members in Police Station Shalimar Bagh, and when they were called by the police, they had demanded for one flat and Rs. 20 lakhs if the prosecutrix wanted to live with them. Thereafter, a complaint was filed by the prosecutrix with the Crime Against Women Cell, Maurya Enclave, so as to pursue her complaint dated 13<sup>th</sup> July, 2012.

4. Advancing the arguments on behalf of the petitioner, Mr. B.S. Rana, Advocate, submits that the petitioner was abducted from his residence on 9.8.2012 at about 9 p.m. and he was severely beaten by the police in the

police station and was taken to AryaSamajMandir, HaritVihar, Burari, Delhi, where he was forced to solemnize the aforesaid marriage with the complainant. To support his arguments counsel for the petitioner placed reliance on some of the photographs placed on record wherein the petitioner can be seen in a track suit and some police officials taking photographs of the marriage from his mobile. It is also the case of the petitioner that the complainant extorted a sum of Rs. 2.50 lakhs from the petitioner and his family for getting the said marriage dissolved and vide settlement deed dated 10<sup>th</sup> August, 2012, which was duly signed by both the parties and their relatives, the said marriage was declared null and void. It is also the case of the petitioner that on 22<sup>nd</sup> January, 2013, the mother of the petitioner lodged a complaint with the Commissioner of Police to bring correct facts to the knowledge of the police, as to how the petitioner was forced to marry the prosecutrix and how he was blackmailed to pay the said amount of Rs. 2.50 lakhs to the prosecutrix. It is also the case of the petitioner that when the mother of the petitioner lodged a complaint, it is only thereafter that the respondent got the said case registered against the petitioner on 30<sup>th</sup> January, 2013. Counsel for the petitioner further submits that the petitioner and the complainant were known to each other for the last three years and during that period, both of them started loving each other and the physical intimacy shared by both of them was consensual and therefore, there is no question of the

petitioner ever raping the complainant. Counsel also submits that the petitioner had already filed a civil suit to seek decree of declaration to declare the said marriage as null and void and the said suit is pending disposal before the civil Court. Counsel further states that after solemnization of the said marriage the complainant lodged a complaint against the petitioner after a gap of almost 3 years.

5. Counsel for the petitioner further submits that the complainant never challenged the said deed of cancellation of marriage and the said complaint was lodged by the prosecutrix only with a view to extort more money from the petitioner and his family. During the course of the arguments, counsel for the petitioner has also placed on record certain photographs indicating as to how advance the complainant is. Counsel further submits that the photographs make it apparent that the prosecutrix can be seen dressed inappropriately, having beer while sitting next to some boy. It could also be seen that she is lighting cigarette for him.
6. Based on the above submissions, counsel for the petitioner submits that the petitioner has been falsely implicated by the respondent in the present case.
7. The present bail application of the petitioner has been strongly opposed by Mr Navin Sharma learned APP for the State duly assisted by the counsel representing the complainant. Mr Navin Sharma submits that the petitioner sexually exploited the prosecutrix on the assurance of marrying

her although he never intended to do so. Counsel also submits that there are specific allegations levelled by the complainant against the petitioner, forcing the complainant to have sexual relations with her and on many occasions he even threatened to kill her and defame her. On one occasion he even mixed some drug in her cold drink and thereafter, shared physical intimacy with her. He also blackmailed the complainant that he would upload her pictures/ videos on the 'YouTube' if she refused to maintain sexual relations with him. Counsel further submits that the petitioner was never forced to marry the complainant but the police officials were deployed by the area SHO in civil uniform to ensure that no untoward incident takes place at the time of solemnization of the marriage. Counsel also submits that the petitioner has forged and fabricated the deed of divorce dated 11<sup>th</sup> August, 2012 as on enquiry it was found that the said divorce deed was never notarized by SaritaGarg, Advocate. Counsel also submits that as per the complaint dated 22.1.2013 filed by the mother of the petitioner to the SHO Shalimar Bagh, the prosecutrix left for Jaipur immediately on the following day of the said marriage and she had returned to Delhi after 3 days. Counsel for the State further submits that if as per the mother of the petitioner she was at Jaipur on the following day of her marriage then how could she have signed a divorce deed and got the same attested from the notary.

8. I have heard learned counsel for the parties at considerable length and

given my anxious consideration to the arguments advanced by them.

Before I proceed to decide the aforesaid bail application, it would be pertinent to discuss some recent judgments in the said context.

9. The judgment of the Apex Court, in the case of ***Deepak Gulati V. State of Haryana***, Criminal Appeal No. 2322/2010, the Hon'ble Supreme Court while dealing with an appeal filed by the appellant convicted for the offence punishable under Sections 365 and 376 of the Indian Penal Code, 1806, held as under:-

*"14. The undisputed facts of the case are as under:*

*I. The prosecutrix was 19 years of age at the time of the said incident.*

*II. She had inclination towards the appellant, and had willingly gone with him to Kurukshetra to get married.*

*III. The appellant had been giving her assurance of the fact that he would get married to her.*

*IV. The physical relationship between the parties had clearly developed with the consent of the prosecutrix, as there was neither a case of any resistance, nor had she raised any complaint anywhere at any time despite the fact that she had been living with the appellant for several days, and had travelled with him from one place to another.*

*V. Even after leaving the hostel of Kurukshetra University, she agreed and proceeded to go with the appellant to Ambala, to get married to him there.*

*18. Consent may be express or implied, coerced or misguided, obtained willingly or through deceit. Consent is an act of reason, accompanied by deliberation, the mind weighing, as in a balance, the good and evil on each side. There is a clear distinction between rape and consensual sex and in a case like this, the court must very carefully examine whether the accused had actually wanted to marry the victim, or had mala fide motives, and had made a false promise to this effect only to satisfy his lust, as the latter falls within the ambit of cheating or deception. There is a distinction between the mere breach of a promise, and not fulfilling a false promise.*

21. Hence, it is evident that there must be adequate evidence to show that at the relevant time, i.e. at initial stage itself, the accused had no intention whatsoever, of keeping his promise to marry the victim. There may, of course, be circumstances, when a person having the best of intentions is unable to marry the victim owing to various unavoidable circumstances. The "failure to keep a promise made with respect to a future uncertain date, due to reasons that are not very clear from the evidence available, does not always amount to misconception of fact. In order to come within the meaning of the term misconception of fact, the fact must have an immediate relevance." Section 90 IPC cannot be called into aid in such a situation, to pardon the act of a girl in entirety, and fasten criminal liability on the other, unless the court is assured of the fact that from the very beginning, the accused had never really intended to marry her.

22. The instant case is factually very similar to the case of Uday (Supra), wherein the following facts were found to exist:

I. The prosecutrix was 19 years of age and had adequate intelligence and maturity to understand the significance and morality associated with the act she was consenting to.

II. She was conscious of the fact that her marriage may not take place owing to various considerations, including the caste factor.

III. It was difficult to impute to the accused, knowledge of the fact that the prosecutrix had consented as a consequence of a misconception of fact that had arisen from his promise to marry her.

IV. There was no evidence to prove conclusively, that the appellant had never intended to marry the prosecutrix.

23. To conclude, the prosecutrix had left her home voluntarily, of her own free will to get married to the appellant. She was 19 years of age at the relevant time and was, hence, capable of understanding the complications and issues surrounding her marriage to the appellant. According to the version of events provided by her, the prosecutrix had called the appellant on a number given to her by him, to ask him why he had not met her at the place that had been pre-decided by them. She also waited for him for a long time, and when he finally arrived she went with him to the Karnalake where they indulged in sexual intercourse. She did not raise any objection at this stage and made no complaints to anyone. Thereafter, she also went to Kurukshetra with the appellant, where she lived with his relatives. Here to, the prosecutrix voluntarily became intimate with the appellant. She then, for some reason, went to live in the hostel at Kurukshetra University illegally,

*and once again came into contact with the appellant at the Birla Mandir. Thereafter, she even proceeded with the appellant to the old bus-stand in Kurukshetra, to leave for Ambala so that the two of them could get married in court at Ambala. However, here they were apprehended by the police.*

*24. If the prosecutrix was in fact going to Ambala to marry the appellant, as stands fully established from the evidence on record, we fail to understand on what basis the allegation of "false promise of marriage" has been raised by the prosecutrix. We also fail to comprehend the circumstances in which a charge of deceit/rape can be leveled against the appellant, in light of the afore-mentioned fact situation."*

10. While dealing with the anticipatory bail application of an accused of committing the same offence, this Court in the case of Mohd. Iqbal V.

State, Bail Application no. 2145 of 2009, held as under:-

*"There is an old Jewish saying "if you are close when you should be distant, you will be distant when you should be close". It is for both man and woman to restrain themselves and not to indulge in intimate activities prior to the marriage. Undoubtedly it is responsibility, moral & ethical, both, on the part of men not to exploit any woman by extending false promise or through devious acts to force or induce the girl for sexual relationship. But ultimately, it is woman herself who is the protector of her own body. Promise to marry may or may not culminate into marriage. It is the prime responsibility of the woman in the relationship or even otherwise to protect her honour, dignity and modesty. A woman should not throw herself to a man and indulge in promiscuity, becoming source of hilarity. It is for her to maintain her purity, chastity and virtues"*

11. In another bail application No. 1760 of 2012 dealing with the same offence, this Court held as under:-

*"Rape is one of the most barbaric and heinous crimes not only against the victim of the rape but also against the society as a whole. The cases of rape, gang rape and digital rape are on increase and perpetrators of this inhuman and brutal crime are worse than even the beasts and deserve to be dealt with a heavy hand. The entire country is seriously debating this issue and there are proposals coming forth*

*that death penalty should be the answer to deal with the accused involved in such heinous crime. Having said this, I am also constrained to observe here that no one should be allowed to trivialise the gravity of offence by misusing the same as a weapon for vengeance or vendetta."*

12. It is appalling to see that rape rears its ugly facade almost every day. As per the National Crime Record Bureau, in India, a rape is committed every 20 minutes. Rape being the fastest growing crime is undoubtedly one of the most deplorable, belligerent and atrocious act committed against the dignity of a woman. Rape has been held to be even more serious than murder which not only destroys the woman physically but also shatters her inner self by destroying her each living moment emotionally and psychologically.
13. Rape is a crime against one's mind, psyche and reputation. Rape leaves a permanent scar on the life of the victim and it becomes horrendous for the victim of rape to lead a dignified and well respected life in the society. It is very unfortunate that there is a high increase in the rape instances and ravenous maniacs are not even sparing the girls of a very tender age. Some of the recent rape cases have been so horrifying that the entire nation protested to condemn these barbaric acts and raised a voice to curb the said menace by inflicting more severe punishment. The Government also promptly appointed Justice J.S. Verma Committee to review laws on crimes against women, which recommended certain dramatic changes in the Criminal law relating to offences against women.

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.

16. The court can also not be oblivious of the fact that the marriage between the complainant and the petitioner had indeed taken place and both the parties have not disputed this fact. Therefore, this circumstance by itself entitles the petitioner to the grant of the anticipatory bail. We are not commenting here upon the circumstances which led to the solemnisation of the said marriage as there is a civil suit already pending before the court. It would be worthwhile to mention that being the victim of such a reprehensible crime, one should lodge a complaint immediately, or within a reasonable period of time unless there are sufficient reasons to explain the long delay. Delay in lodging an FIR, in such like cases can ultimately diminish the chances of conviction, as due to such delay, the medical evidence and the other circumstantial evidence may rarely be available to support the case of prosecution.

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.

18. Considering the facts of the present case, in light of the aforesaid discussion and the material on record, I am inclined to grant anticipatory bail to the petitioner. Accordingly in the event of arrest, the petitioner shall be released on bail subject to furnishing of his personal bonds in the

sum of Rs. 50,000 with one surety of the like amount to the satisfaction of the arresting officer.

19. It is directed that the petitioner and his family members shall not visit the prosecutrix or try to intimidate her.

20. The present anticipatory bail application stands disposed of. It is ordered accordingly.

Dasti.

**KAILASH GAMBHIR, J**

**MAY 22, 2013**