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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on: 06.06. 2013

Date of Decision: 07.06.2013

BAIL APPLN. 926/2013 & Crl. M.A. 1116/2013 (Interim Bail)

ABHISHEK JAIN

..... Petitioner

Through: Mrs. Jyoti Singh, Sr. Adv. with
Mr. Manish Jain, Mr. Ankur
Garg, Mr. Sougata Ganguly, Mr.
Deepak Bansal and Ms. Saaila,
Advs.

versus

STATE

..... Respondent

Through: Mr. Mukesh Gupta, APP for the
State.

CORAM:

MR. JUSTICE R.V. EASWAR

JUDGMENT

R.V. EASWAR, J.:

This application under Section 438 of the Cr.P.C. has been filed by one Abhishek Jain in case FIR No.128 of 2013 registered in PS Saraswati Vihar, North West District under Section 376/420/506/34 of the Indian Penal Code.

2. The application has been filed in the following circumstances. The complainant, Nirmal Kaur alias Neha Gabree, is aged 24 years and is working as Assistant Accounts Manager in a firm in Delhi. She got married to the applicant on 4.3.2013 in the Arya Samaj Mandir Trust. The marriage was also registered by the Registrar of Hindu Marriages, Ghaziabad on 4.3.2013.

On 30.3.2013 the complainant filed a FIR against her husband Abhishek Jain, the applicant herein, stating that he raped her on the false pretext of marriage and also threatened to kill her. She referred to her earlier complaint dated 25.2.2013 where she had stated that Abhishek Jain was having an affair with her for more than two years before the marriage and that during that period, he had raped her several times in the false pretext and promise of marrying her. She also alleged that even after marriage he continued to torture her and physically abuse her. Action was therefore requested to be taken against the applicant/accused.

3. Apprehending arrest, the accused has filed the present application for anticipatory bail, the bail application filed by him before the Additional Sessions Judge having been dismissed by order dated 25.4.2013.

4. I have considered the facts and the rival contentions. The complainant filed a complaint earlier on 25.2.2013 with the SHO, Rani Bagh Police Station, Delhi. In that complaint she had stated how on several occasions before the marriage the applicant had raped her, after falsely promising to marry her. However, on 4.3.2013 the applicant and the complainant actually got married and there is evidence in the form of the certificate given by the Arya Samaj Vivah Mandir Trust, Ghaziabad and the certificate of registration given by the Registrar, Hindu Marriages, Ghaziabad. Both the certificates are

dated 4.3.2013. The FIR also narrates the physical abuse which the complainant had suffered in the hands of the applicant after the marriage and that because the parents of the accused did not accept the marriage of their son with the complainant, the accused stayed away from them in a rented house in Rohini. The FIR further narrates that the accused even used to tell the complainant that “he had married me only to make me withdraw my complaint.” Apparently the accused had even lied about his job; he in fact did not have any job and was dependant on the complainant to meet the household expenses. He was also demanding money from her every now and then. Several instances are narrated in the FIR about the threats and physical abuse suffered by the complainant not only from the applicant but also by his family members who had conspired together to cheat her and get her married to him only to make her withdraw the complaint of rape against him.

5. The above specific averments in the FIR are grave. It is not clear to me why the applicant abused the complainant and inflicted physical injuries upon her by beating her if he really loved her and got married to her. The complaint dated 25.2.2013, a copy of which is on record, cogently narrates the long relationship which the complainant and the applicant had before their marriage during which time, as narrated by the complainant, the accused raped the complainant several times after falsely promising to her that he will marry her. Having sexual relations with a woman against her will or without

her consent also amounts to rape under section 375 of the IPC. If the consent was obtained on a false assurance or promise of marriage, the consent cannot be considered to be full and free and it would be a case of rape. This is what appears to have happened to the complainant before the marriage took place on 4.3.2013. The complaint also contains reference to an occasion when the complainant was taken to a lady doctor at Shalimar Bagh for check up and treatment of pregnancy. There is also reference to the fact that the accused had threatened her that he has taken photographs while they spent time in a hotel at Gurgaon and that he would put those photographs on the internet and ruin her character for life and that then she will be left with no option but to commit suicide. When the complainant filed a complaint on 25.2.2013 containing such serious allegations against the applicant, it was natural for him to think that marrying the complainant would leave her with no option but to withdraw the complaint. The marriage was therefore gone through only as a means of making the complainant withdraw her complaint. This is what actually happened and on the very next day of the marriage i.e. on 5.3.2013; a hand written letter was filed with the SHO by the complainant that she is withdrawing her complaint dated 25.2.2013. In these circumstances it would be naïve to think that the marriage was a solemn “samskara” entered into between the parties as a union for life.

6. The learned counsel for the applicant contended that the FIR was

instigated because the parents of the accused had disowned him and disinherited him from their property. I am not prepared to accept the contention. The FIR and the earlier complaint contain reference to the family members of the accused, including his parents, threatening and abusing the complainant. If they had disowned him, they could not have come to his aid and support to such an extent; that throws considerable doubt on the credibility of the alleged “disowning” of the accused by them.

7. The learned counsel for the applicant referred to two judgments of this Court. The first is the judgment dated 22.5.2013 of Kailash Gambhir, J in Bail Appln.311/2013 (***Rohit Chauhan Vs. State NCT of Delhi***). That was also a case of an FIR registered under sections 376/506/328 of the IPC. There, on the facts of the case, the learned Judge was not prepared to accept that the accused committed rape of the prosecutrix. There were peculiar circumstances in that case, as a reading of the judgment would show. There the prosecutrix was, in the words of the learned Judge,

“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.”

The above and the general observations made by the learned Judge in paragraph 14 of the judgment have to be understood in the light of the facts of that case and do not constitute the *ratio decidendi*. The other judgment is ***Jagdish Nautiyal Vs. State*** 2013 1AD (Delhi) 475. In that case the learned Judge (V. K. Shali, J) held that unless and until there is an imminent and great imperative to have custodial interrogation of the accused, the anticipatory bail should be granted. It was further observed that even assuming that the allegations in that case against the bail applicant were correct, at best a case of consent of the complainant for contracting marriage having been obtained by fraud or misrepresentation would be made out, and that does not require any custodial interrogation. Each case is decided in the background of the facts of that particular case and there can be no general proposition that in all cases where the complainant says that her consent was obtained by fraud or

misrepresentation, custodial interrogation of the accused would not be necessary. Again the observations in the cited decision need to be appreciated and understood on the basis of the facts and circumstances of that case.

8. The facts of the present case are tell-tale. It would prima facie appear that the marriage was gone through only to persuade the complainant to withdraw her complaint dated 25.2.2013. Immediately after the marriage the applicant started physically abusing the complainant, apparently, in the hope that she would leave him, but when she filed a complaint, the accused was forced to apply for bail. The joint statement made before the sessions court was only to the effect that they were married, and nothing more. The efforts towards mediation failed and the sessions court referred the matter to the assigned court which dismissed the bail application. Even before me, the complainant who appeared stated that she was not willing to go for mediation.

9. For the above reasons I do not find any merit in the anticipatory bail application. The same is rejected. All pending applications also stand disposed of.

**R.V. EASWAR
(VACATION JUDGE)**

JUNE 07, 2013
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