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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Judgment delivered on: 03.01.2024

+ **BAIL APPLN. 2188/2023**

ANIL NIRWAN

..... Petitioner

Through: Dr L. S. Chaudhary and Mr. Karanveer
Singh, Advocates.

versus

STATE OF NCT OF DELHI

..... Respondent

Through: Mr. Hemant Mehla, APP for State with
SI Komal PS Maidan Garhi.
Mr. Vaibhav Dubey, Mr. Pradyuman
Kaistha and Mr. Shubham Jain,
Advocates for R-2.

CORAM:

HON'BLE MR. JUSTICE VIKAS MAHAJAN

JUDGMENT

VIKAS MAHAJAN, J.

1. The present petition has been filed seeking regular bail in connection with FIR No. 220/2022 under Sections 376/420 IPC registered at PS Maidan Garhi, New Delhi.
2. The case of the prosecution as borne out from the FIR is that the complainant met the petitioner / accused on 25.12.2020 on a dating App "Hinge" and they became good friends and eventually fell in love. It is further alleged that the petitioner revealed the complainant about his higher education, his engineering degree from IIT Kharagpur, his double master



from U.K. and New Zealand and further of Ph.D from Kings College, London.

3. They planned to meet physically in Delhi on 06.01.2021, but on 05.01.2021 the petitioner informed that he was down with malaria and need hospitalisation and asked the complainant to pay him an amount of Rs. 25,000/- as loan with promise to return the same after April, 2021.

4. It is further alleged in the FIR that the petitioner came to Delhi on 01.02.2021 and the complainant picked him from the Airport and they arrived at AIRBNB at Kishan Garh to stay. After dropping the luggage there, the complainant booked another cab to bring the petitioner to her house, where the petitioner initiated sexual contact with her on the pretext of marriage and long companionship and had sexual intercourse with her.

5. It is further alleged that at that time the flat mate of the complainant was also present in the house. Thereafter, the petitioner went away. It is further the case of the prosecution that on the same day in the evening, both of them shifted to AIRBNB at Kishan Garh and stayed there for next four days and had repeated sex.

6. It is alleged that on 04.09.2021, the petitioner again visited the complainant in Delhi and stayed in her flat and again he had sexual intercourse with the complainant on the pretext of marriage and long companionship.

7. It is also alleged that the complainant has given an amount of Rs. 1.2 Crore to the petitioner for his treatment.

8. The learned counsel for the petitioner submits that no promise to marry the complainant was made by the petitioner. The petitioner and the complainant met on a dating App and not on a matrimonial App. The



allegation of false promise of marriage is only an afterthought.

9. He invites the attention of the court to the cross examination of the prosecutrix who was examined by the prosecution as PW-1 to contend that the prosecutrix herself has admitted sending erotic stories to the petitioner through WhatsApp. Further, referring to the cross examination of PW-1, he submits that the prosecutrix has admitted that she came to know about the fact that the petitioner is only a B.Sc. Graduate with no Ph.D. etc. as early as on 01.02.2021. Therefore, there is no substance in the allegation that the sexual relations, which were established by the petitioner with the complainant on 01.02.2021, or thereafter, were under the misconception of the petitioner's education and other credentials.

10. Insofar as the allegation that many obscene photographs and videos of the complainant were recovered from the mobile phone of the petitioner by the FSL, he invites the attention of the court to the cross examination of the prosecutrix, to contend that she herself has admitted that such photographs and videos were prepared with her consent.

11. As regard the allegation of cheating are concerned, it is the contention of the learned counsel for the petitioner that there is no allegation of inducement which is a necessary ingredient for the offence under Section 420 IPC. He submits that every money transaction cannot be a cheating. He further submits that the money which was paid by the complainant to the petitioner was utilized for the purpose of hotel bookings etc. as desired by the prosecutrix.

12. He further submits that in the FIR, it has been alleged that an amount of Rs. 25,000/- was paid by the complainant to the petitioner as loan on 11.01.2021 and in the event the said amount was not returned by the



petitioner, there was no occasion for the complainant to make further payments to the petitioner. He submits that this itself shows that the payments were made by the complainant to the petitioner voluntarily.

13. As regard the allegation that the petitioner had persuaded the respondent to send the said money for his treatment on the basis of fabricated medical papers, he invites the attention of the Court to the status report to contend that no document related to medical treatment was found by the FSL from the devices seized from the petitioner / accused.

14. He submits that the petitioner is in custody since 13.05.2022 and the charge sheet has been filed and the prosecutrix also stands examined, therefore, the custody of the petitioner is no more required. In the charge sheet the prosecution has cited as many as 18 witnesses and till date only 07 witnesses have been examined, therefore, the trial is going to be a protracted one. The antecedents of the petitioner are also clean. He, therefore, urges the Court to enlarge the petitioner on bail.

15. *Per contra*, the learned APP for the State, assisted by the learned counsel for the complainant, has argued on the lines of the status report. He submits that the petitioner misrepresented to the prosecutrix as regard his medical condition, on the basis of which the prosecutrix paid substantial amount to the petitioner for his treatment.

16. He submits that the stand of the complainant under Section 161 CrPC, 164 CrPC, as well as, in the testimony recorded by the Court, have been consistent. The allegation of false promise has also been corroborated by the flat mate of the prosecutrix who has been examined as PW2.

17. I have heard the learned counsel for the petitioner, the learned APP for the State, as well as, the learned counsel for the complainant.



18. It is not in dispute that the complainant and the petitioner met on a dating App “Hinge” and not on a matrimonial App. There has been exchange of numerous WhatsApp messages between them and in none of the messages there is any promise made by the petitioner to marry the prosecutrix or a proposal of marriage mooted by the prosecutrix and accepted by the petitioner.

19. A query was also put by the Court to the learned counsel for the complainant to point out any such promise made by the petitioner from the WhatsApp messages exchanged between the petitioner and the complainant, but the learned counsel could not refer to any such WhatsApp message.

20. A detailed appreciation of evidence is not warranted at the stage of considering the application for bail, however, for the limited purpose of giving the reasons for rejection or grant of bail, the testimonies and other material is being referred to. A perusal of the cross-examination of the prosecutrix who was examined as PW-1 shows that she admitted having sent erotic stories to the petitioner through chats on 12.01.2021 (Ex.PW-1/DX-1 [Colly]) and subsequently on various dates viz., on 19.01.2021, 22.01.2021, 23.01.2021, 26.01.2021, 29.01.2021 and 15.02.2022.

21. In her examination-in-chief also the complainant has stated that the petitioner first time came to her flat on 01.02.2021 and after that he left her flat saying that he has to visit Delhi University for a job offer. She later came to know that he was a B.Sc graduate with no Ph.D or literature related credentials. Even after that on the same day in the evening they moved to the AIR BNB and subsequent thereto, the prosecutrix stayed with the petitioner for four days and during that period repeated sexual encounters happened.

22. As regard the obscene photographs and videos of the prosecutrix



recovered from the mobile phone of the petitioner by the FSL, the prosecutrix in her cross examination has admitted that such photographs and videos were taken with her consent.

23. In the aforesaid factual backdrop, *prima facie*, the sexual intercourse appears to be consensual and there does not seem to be any false promise of marriage or the consent having been obtained on a misconception of any fact.

24. Insofar as the story projected by the prosecution that the petitioner had been taking money from the complainant by making misrepresentation as regards his ill health and for that purpose he was sending fabricated medical papers to her, it appears from the status report filed by the State before this Court, more particularly para 22 thereof, which shows that no document related to medical treatment was found by the FSL from the mobile phone, sim card and laptop, i.e., Apple Mac Book, seized from the petitioner/accused.

25. On the contrary, the prosecutrix at one stage of her cross-examination has herself admitted that whatever money she had given to the petitioner, it was for his help and out of her love and affection for him.

26. That apart, it is the case of the prosecution that the first payment of Rs.25,000/- was made by the prosecutrix to the petitioner on 11.01.2021 as loan for his treatment of malaria, on the promise made by the petitioner that he will return the same after April, 2021. It is not understandable that if the said amount was not repaid by the petitioner, then why the prosecutrix continued to make huge payments to the petitioner.

27. It is also trite that a bail application cannot be equated with a civil suit for recovery. Reference in this regard may be had to the decision of the



Supreme Court in *Bimla Tiwari v. State of Bihar*¹, the relevant extract reads thus:

“9. We have indicated on more than one occasion that the process of criminal law, particularly in matters of grant of bail, is not akin to money recovery proceedings but what has been noticed in the present case carries the peculiarities of its own.

10. We would reiterate that the process of criminal law cannot be utilised for arm-twisting and money recovery, particularly while opposing the prayer for bail. The question as to whether pre-arrest bail, or for that matter regular bail, in a given case is to be granted or not is required to be examined and the discretion is required to be exercised by the Court with reference to the material on record and the parameters governing bail considerations. Putting it in other words, in a given case, the concession of pre-arrest bail or regular bail could be declined even if the accused has made payment of the money involved or offers to make any payment; conversely, in a given case, the concession of pre-arrest bail or regular bail could be granted irrespective of any payment or any offer of payment.”

(Emphasis supplied)

28. The probative value of the evidence, the credibility and reliability of the prosecution witnesses will be seen by the learned Trial Court during trial but this Court cannot be unmindful of the gaps that have appeared in the version projected by the prosecution which tilts the balance in favour of the petitioner for grant of regular bail.

29. It is not in dispute that the petitioner does not have criminal record. It is also not the case of the prosecution that the petitioner is a flight risk. Further, the investigation is complete and the custody of the petitioner is no more required for making any recoveries from him. Therefore, no useful

¹2023 SCC OnLine 51



purpose will be served in keeping petitioner in jail.

30. The testimonies of public witnesses have been recorded, therefore, there is no possibility of witnesses being influenced by the petitioner in the event he is enlarged on bail.

31. Furthermore, the prosecution has cited as many as 18 witnesses and till date only 07 witnesses have been examined, therefore, the conclusion of trial is not possible anytime soon and in the given facts and circumstances of the case, the petitioner, who is behind the bars since 13.05.2022, cannot be kept in custody for an indefinite period to await the conclusion of trial.

32. On an overall conceptus of facts and circumstances of the case, the petitioner has made out a case for grant of regular bail. Accordingly, the petitioner is admitted to bail subject to his furnishing a Personal Bond in the sum of Rs.25,000/- and one Surety Bond of the like amount subject to the satisfaction of the Trial Court / Jail Superintendent, further subject to the following conditions:-

- (i) Petitioner shall appear before the Court as and when the matter is taken up for hearing.
- (ii) Petitioner shall provide his mobile number to the Investigating Officer concerned which shall be kept in working condition at all times and he shall not change the mobile number without prior intimation to the Investigating Officer concerned.
- (iii) Petitioner shall not indulge in any criminal activity and shall not communicate with or come in contact with the complainant/witnesses or any family members of the complainant/witnesses.

33. The petition is disposed of.

34. It is made clear that the observations made herein are only for the



purpose of considering the bail application and the same shall not be deemed to be an expression of opinion on the merits of the case.

35. Copy of order be forwarded to the concerned Jail Superintendent for necessary compliance.

36. Order *dasti* under signatures of the Court Master.

37. Order be uploaded on the website of this Court.

VIKAS MAHAJAN, J.

JANUARY 03, 2024
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