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

DECIDED ON : 15th OCTOBER, 2015

+ **BAIL APPLN. 1755/2015**

GAURAV SHUKLA

..... Petitioner

Through : Ms.Geeta Luthra, Sr.Advocate with
Mr.Kedar Yadav, Advocate.

versus

STATE

..... Respondent

Through : Mr.Amit Ahlawat, APP.
Mr.Abhay Singh Kushwaha,
Advocate with Ms.Vandana
Sharma, Advocate for complainant.

**CORAM:
HON'BLE MR. JUSTICE S.P.GARG**

S.P.Garg, J. (Oral)

1. The petitioner seeks anticipatory bail under Section 438 Cr.P.C. in case FIR No.0848/2015 registered under Sections 376/494/495/506 IPC at PS K.M.Pur. Status report is on record. Bail is opposed by the learned counsel for the complainant.

2. FIR in this case has been registered on the basis of written complaint given by the complainant 'X' (assumed name) on 15.07.2015.

As per the complaint, 'X' came in contact with the petitioner, an under-training IRS Officer, through a family friend S.P.Singh, to guide her in the preparation for civil services in February, 2014 at Delhi. They remained in touch on facebook and mobile internet thereafter. When the petitioner proposed her for marriage on whatsapp, she told him to contact her parents. On 15.03.2014, the petitioner came to meet her parents and a meeting took place at the residence of one Ashok Kapoor, 915 Nehru Road, Arjun Nagar. Ashok Kapoor advised them to wait for marriage and let the petitioner complete his training. The petitioner declined to inform his parents about it on the pretext that his brother was going to get marry against their wishes. The petitioner assured X's parents that he would marry her. In April, 2014 at the petitioner's instance, she went to Nagpur and stayed at Radisson Blue. There the petitioner sexually harassed her after administering an intoxicating substance in her drink. In June 2014, the petitioner after getting Extra Ordinary leave from the Academy came to Delhi for six months to prepare for exam again and stayed with them at their house from 15.06.2014 to 25.06.2014. Physical relations were established by him with her. 'X' further informed that the petitioner forced her to stay with him in a hostel at Rajinder Nagar but was not so permitted by her parents. The petitioner assured her parents and well-

wishers by giving a written undertaking that he would marry her. On that assurance, he took her to Rajinder Nagar where they stayed in live-in-relationship from 25.06.2014. She further stated that during this period she conceived once but the pregnancy was got aborted by administering some contraceptive pills by the petitioner. Subsequently, they solemnized marriage at Arya Samaj Vivah Mandir, M.P.Enclave, Ghaziabad, U.P. on 08.09.2014. The petitioner thereafter started subjecting her with mental and physical cruelty; she was criminally intimidated and assaulted. The petitioner used to threaten to kill her and her family members. On 09.07.2015, the petitioner confessed that he was already married and had a six year old daughter.

3. Learned Senior Counsel for the petitioner urged that a false motivated complaint has been lodged by 'X' to blackmail the petitioner to extract money. She was a consenting party throughout and had lived with the petitioner with her free consent in her house. It was vehemently urged that ingredients of Section 376 IPC are not attracted as the petitioner herself has claimed that the marriage took place between the two on 08.09.2014. At the most, the case falls within the purview of Sections 494 and 495 IPC which are bailable in nature. The petitioner has joined the investigation and his custodial interrogation is not at all required. It is

further urged that the prosecutrix and her family members were aware about the marital status of the petitioner. In a chat conversation on facebook on 28.08.2014, 'X' had addressed his daughter as 'Tashu'. On 30.03.2015, she made extortionate demands and extended various threats. In her statement under Section 161 Cr.P.C. Lata has completely exonerated the petitioner to have any objectionable relations with her. Reliance has been placed on '*Sajal Gupta vs. State of NCT of Delhi*', Bail Appln.1467/2007, '*Nirmal Vaid vs. State of NCT of Delhi*', Bail Appln.1760/2012, '*Arif Iqbal @ Imran vs. State*', (2009) 164 DLT 157, '*Jagdish Nautiyal vs. State*', 2012 AD (Delhi) 475 & '*Rohit Chauhan vs. State (NCT of Delhi)*', Bail Appln.311/2013.

4. Learned Addl. Public Prosecutor assisted by learned counsel for the complainant has opposed the grant of anticipatory bail as there are serious allegations against the petitioner.

5. Admitted position is that the petitioner was married to one Alka Shukla and the said marriage was solemnized in 2005. A female child was born out of the said marriage and she is aged around six years. The petitioner has not denied acquaintance with the victim since February, 2014. Undeniably physical relations were made with 'X'. It is pleaded that it was consensual.

6. During investigation, it revealed that the petitioner and the victim had performed 'marriage' on 08.09.2014 at Arya Samaj Vivah Mandir Trust (Regd.), Ghaziabad, U.P. Not only that, the marriage was registered with the Registrar, Hindu Marriages, Sub-district Ghaziabad, U.P. on 08.09.2014. The Investigating Agency has collected relevant certificates which are not under challenge. In the Certificate of Marriage issued by Arya Samaj Vivah Mandir Trust (Regd.), Ghaziabad, U.P. dated 08.09.2014, the petitioner had disclosed his status 'unmarried'. It belies petitioner's assertion that 'X' and her family members were aware of his marital status in March, 2014. In the instant petition, an attempt has been made by the petitioner to wriggle out of the said marriage alleging that he was pressurized and forced to put signatures on a false marriage certificate. The petitioner has, however, not given any reasons as to why till date, no complaint whatsoever has been lodged against 'X' or her family members for compelling him to put signatures on false marriage certificate. No legal proceedings have been initiated to challenge the genuineness and authenticity of the said documents. Photograph taken at the time of marriage negate petitioner's claim.

7. A specific query was put to the learned Senior Counsel for the petitioner during arguments whether the petitioner stood by 'marriage'

solemnized on 08.09.2014. She was unable to answer that. Her response was that according to the prosecutrix, the marriage had taken place between the two on 08.09.2014. In the Affidavit dated 30.09.2015 filed as Additional document, the petitioner has challenged the legality and validity of the said marriage. Under these circumstances, he cannot be permitted to urge that Section 376 IPC is not attracted and only offences to be proceeded against him are under Sections 494/495 IPC.

8. Status Report / Additional Status Report reveal that the petitioner had stayed with the prosecutrix at Hotel Radisson Blue, Nagpur on various dates i.e. 28.03.2014 to 31.03.2014; 08.05.2014 to 12.05.2014; 25.04.2015 to 25.04.2015 and 26.04.2015 to 27.04.2015. Director of Hotel Radisson Blue (Nagpur) has also provided identity proof of two other girls with whom the petitioner had stayed in the said hotel from 28.09.2013 to 30.09.2013; 12.10.2013 to 13.10.2013 and 28.03.2015 to 29.03.2015. Police file contains twelve hard copies of chatting of the petitioner with another girl Pallavi Shruti through gmail.com to whom he had allegedly proposed for marriage. These vital documents, prima facie, speak volume of petitioner's antecedents.

9. 'X' has placed on record an 'undertaking' given by the petitioner on 22.06.2014 to marry her. On that assurance, the petitioner

had taken the victim with him to stay in Rajinder Nagar. Subsequently, marriage took place between the two on 08.09.2014 at Arya Samaj Vivah Mandir Trust (Regd.), Ghaziabad, U.P. Apparently, physical relations made by the petitioner with the prosecutrix were on the false promise to marry. At no stage, the petitioner disclosed his marital status to the prosecutrix and obtained her consent for sexual relationship by false misrepresentation. It would, prima facie, appear that the marriage was gone through only to persuade the complainant to continue physical relationship with him.

10. This Court in '*Nikhil Parasar vs. The State Govt. NCT of Delhi*' ILR (2010) Supp.(2) Delhi 1 (Bail Application No.1745/09 decided on 01.02.2010) discussed '*Deelip Singh vs. State of Bihar*', 2004 (IV)AD CrI.433, where the Hon'ble Supreme Court, inter alia, observed as under :

"it needs to be clarified that a representation deliberately made by the accused with a view to elicit the assent of the victim without having the intention or inclination to marry her, will vitiate the consent. If on the facts it is established that at the very inception of the making of promise, the accused did not really entertain the intention of marrying her and the promise to marry held out by him was a mere hoax, the consent ostensibly given by the victim will be of no avail to the

accused to exculpate him from the ambit of Section 375 Clause secondly.”

11. In ‘Yedla Srinivasa Rao vs. State of A.P.’, 2006 VIII AD (SC) 309, the Hon’ble Supreme Court, inter alia, held as under :

“This kind of consent obtained by the accused cannot be said to be any consent because she was under a misconception of fact that the accused intends to marry her, therefore, she had submitted to sexual intercourse with him..... It is more than clear that the accused made a false promise that he would marry her. Therefore, the intention of the accused right from the beginning was not bona fide and the poor girl submitted to the lust of the accused completely being misled by the accused who held out the promise for marriage. This kind of consent taken by the accused with clear intention not to fulfil the promise and persuaded the girl to believe that he is going to marry her and obtained her consent for the sexual intercourse under total misconception, cannot be treated to be a consent. It is always matter of evidence whether the consent was obtained willingly or consent has been obtained by holding a false promise which the accused never intended to fulfil. If the court of facts come to the conclusion that the consent has been obtained under misconception and the accused persuaded a girl of tender age that the he would marry her then in that case it can always be said that such consent was not obtained voluntarily but under a misconception of fact and the accused right from the beginning never intended to fulfil the promise. Such consent cannot condone the offence.”

12. This Court held that :

“....though every case of having sexual intercourse with a girl, on the promise of marrying her, would not amount to commission of rape, it cannot be said that in no case, having sexual intercourse with a girl on the strength of such a promise would amount to commission of rape. Every such case has to be examined on its individual facts, to be considered in the light of attending circumstances of the case. The Hon’ble Supreme Court has specifically recognized and held that if it is shown that since the very inception of making the promise, the accused did not intend to marry her and the prosecutrix extends her consent to have sexual intercourse with him, only because she believes the misrepresentation made to her, and thereby forms a misconception of fact that the accused was definitely going to marry her, it would amount to commission of rape.”

13. Even in the case of ‘Uday vs. State of Karnataka’, 2003 (2)

Scales 329, the Hon’ble Supreme Court observed as under :

“.....but we must add that there is no strait jacket formula for determining whether consent given by the prosecutrix to sexual intercourse is voluntary, or whether it is given under a misconception of fact. In the ultimate analysis, the tests laid down by the Courts provide at best guidance to the judicial mind while considering a question of consent, but the Court must, in each case, consider the evidence before it and the surrounding circumstances, before reaching a

conclusion, because each case has its own peculiar facts which may have a bearing on the question whether the consent was voluntary, or was given under a misconception of fact.”

14. In the instant case, needless to say, the petitioner from the very inception had no intention to marry the prosecutrix. He obtained the victim's consent for physical relations on the false promise to marry her which he never intended to fulfil. In fact, he was incapable to do so because he was already married and had a child of six years out of the said wedlock. This vital fact was concealed by him. He was well-aware that the consent for physical relation was given by the victim (a young unmarried lady) in consequence of misconception of fact.

15. Various other serious allegations about physical and mental torture have been leveled by the prosecutrix in her complaint.

16. In Nikhil Parasar (supra), this Court further referred to the observations of the Supreme Court in '*Pokar Ram vs. State of Rajasthan*', AIR 1985 SC 969 and held :

“relevant considerations, governing the Court's decision in granting anticipatory bail under Section 438 of the Code of Criminal Procedure, are materially different from those which apply while considering application for bail by a person, who is arrested in the course of

investigation or by a person who is convicted and who seeks bail during pendency of the appeal. The power of the Court under Section 438 of the Code of Criminal Procedure being somewhat extraordinary in character should normally be used only where it appears that the petitioner before the Court may have been implicated in a false case and there are reasonable grounds to believe that he has not likely to otherwise misused the liberty of bail, if granted to him. The offence under Section 376 of IPC being a serious offence, the Court ought to be circumspect while considering request of an accused in a case of this nature for grant of anticipatory bail. The facts and circumstances of this case do not make out an appropriate case for exercise of discretion under Section 438 of the Code of Criminal Procedure. In fact, the Status Report filed by the State, shows that the petitioner has been absconding and has not surrendered, despite raids at the places of his relatives. The application of the petitioner for grant of anticipatory bail has already been rejected by the Court of Sessions. A person, who is absconding and evading process of law, is not entitled to grant of anticipatory bail save in exceptional case justifying departure from this principal. Unless there are peculiar and special facts and circumstances in a given case, the Court would not be justified in extending the benefit of anticipatory bail to such a person.”

17. Considering the gravity of the allegations and the unscrupulous conduct of the petitioner, he is not entitled for grant of anticipatory bail. The bail application is dismissed.

18. Observations in the order would have no impact on merits of the case.

19. Order '*dasti.*'

(S.P.GARG)
JUDGE

OCTOBER 15, 2015 / *tr*