

\$~35

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

+ BAIL APPLN. 1307/2017

DEEPAK PANDEY

.....Petitioner

Through:

Mr. Chander M. Maini, Advocate.

versus

THE GOVT OF NCT OF DELHI

.....Respondent

Through:

Ms. Ashaa Tiwari, APP for the State
with W/ASI Rekha, PS- Punjabi Bagh.

CORAM:

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

ORDER

%

03.08.2017

1. By the present petition filed under Section 439 of Cr.P.C., the petitioner is seeking grant of bail in FIR No. 514/2016 under Sections 376/506 of the IPC registered at Police Station Punjabi Bagh, New Delhi.
2. As per the case of the prosecutrix, aged 19 years, it is alleged that the petitioner developed, sexual relations with her on 09.08.2016 on the false promise of marriage but refused to keep his promise. Therefore, his refusal culminated into lodging of the present FIR.
3. The learned counsel for the petitioner contended that he has been falsely implicated in the present case at the behest of the complainant since the alleged incident, was committed on 09.08.2016, whereas the complaint was made on the 17.08.2016. No explanation has come forth from the complainant for the delay in lodging the complaint. He added that the

relationship between the parties was purely consensual without any false promise of marriage on part of the petitioner and hence, no offence is made out against the petitioner.

4. The learned counsel for the petitioner further contended that material contradictions were found in the statement of the prosecutrix under Section 161 and Section 164 of Cr.P.C. Further, all the allegations made by the prosecutrix stand rebutted in the absence of any medical evidence on record to corroborate the version of the prosecutrix.

5. On the converse, Ms. Ashaa Tiwari, learned APP appearing for the State refuted the contentions of the petitioner and submitted that the prosecutrix has made specific allegations against the petitioner stating that she agreed to establish physical relationship with the petitioner only on the promise of marriage and opposed the grant of bail.

6. I have heard the learned counsel for the parties and perused the material available on record.

7. It is well settled by a catena of judgments that delay in lodging an FIR is not fatal in such like cases as there is a fear of social stigma on the prosecutrix and the family involved. Merely because the complaint was lodged less promptly does not raise an inference that the complaint was false. There is unwillingness to go to the police and file a complaint due to the society's attitude towards victims since it casts doubt and shame upon them rather than comforting and sympathizing with them.

8. As far as the statements of the prosecutrix under Section 161 and Section 164 Cr.P.C. are concerned, both the statements have been perused.

A reading of both the statements shows that they are more or less on the same lines. Even otherwise, minor contradictions, improvements and inconsistencies in the statements of the prosecutrix should not be a ground for throwing out the case of the prosecution.

9. Furthermore, in the case titled **“Uday vs. State of Karnataka”** reported as **(2003) 4 SCC 46**, the Apex Court observed that no straight 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. The relevant para is reproduced as under:-

"22.We are inclined to agree with this view, 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. It must also weigh the evidence keeping in view the fact that the burden is on the prosecution to prove each and every ingredient of the offence, absence of consent being one of them."

10. Relying on the above, as the prosecutrix, in the instant case, has submitted herself for physical relations with the petitioner on the false pretext of marriage, she cannot be said to have given free consent. The same

is inferred from the surrounding circumstances and the statements made by the prosecutrix under Section 161 and Section 164 Cr.P.C.

11. Therefore, this Court is not inclined to grant bail to the petitioner in the light of the facts and circumstances of this case. Resultantly, the present bail application is dismissed.

12. Before parting with the above order, it is made clear that anything observed in the present petition shall not have any bearing on the merits of the case during trial.

SANGITA DHINGRA SEHGAL, J

AUGUST 3, 2017

//gr