

\$~1

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

%

Judgment delivered on: 24.01.2018

+ **BAIL APPLN.157 /2018**

PREM PRAKASH CHAUDHARY

..... Petitioner

versus

STATE

..... Respondent

Advocates who appeared in this case:

For the Petitioner

: Mr. Mohinder Nath Dudeja, Mr Anuj Chauhan and Mr Nitin Sharma.

For the Respondent

: Ms Anita Abraham, APP.
Mr Ram Kumar and Mr L.K.Dixit for the complainant.
SI Shubhangi, PS Preet Vihar.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

24.01.2018

SANJEEV SACHDEVA, J. (ORAL)

1. The petitioner seeks anticipatory bail in FIR No.286/2017 under Sections 376/328 IPC, Police Station Preet Vihar.

2. The allegation in the FIR is that the complainant and petitioner knew each other since September, 2015 and came in contact through Facebook. Petitioner and complainant kept up the contact over phone. It is alleged that on 15.09.2015, complainant went to the Hospital, where petitioner was employed, for treatment of an ailment. On the way back, the petitioner is

alleged to have told the complainant that he liked her and wanted to marry her and developed closeness with the complainant.

3. It is alleged in the FIR that for the first time, in January, 2016, the complainant along with her niece accompanied the petitioner to Kangra, Himachal Pradesh for sightseeing purposes.

4. It is alleged that thereafter both of them continued to remain in contact and whenever the petitioner desired, he would call the respondent for going out and would make physical relationship with her.

5. It is alleged that on 07.04.2016, the complainant was called to a guest house by the petitioner on the pretext of celebrating his birthday. On reaching there, she found that there were no friends present. Thereafter, it is contended that the complainant was given a liquid substance like soup, on drinking of which, she became intoxicated and on gaining her senses, realized that she was not wearing any clothes. When she started crying, the petitioner told her that he intended to marry her. Thereafter, it is alleged that he continued to make physical relationships with the complainant. Further, it is alleged that on 27.10.2016, at about 7 in the evening, the petitioner called her to a Flat in Mandavali and made physical relationship. When petitioner was asked to marry the complainant, he dillydallied.

6. The complainant contends that she, for the last five years, is working as Assistant Nurse and whatever salary was being received by her, was being taken by the petitioner.

7. Learned counsel for the petitioner contends that the entire allegations are false. He contended that from the allegations it is apparent that even as per the complainant the sexual relationship was consensual. So there was no question of obtaining consent by fraud. The petitioner/accused is innocent and has not committed any offence. It is contended that the petitioner was called to the Police Station on 15.10.2017. In Police Station Mandawali, petitioner was handed over a written complaint made by the complainant in her own handwriting and given to the SHO, copy of which is annexed as Annexure P-4. The original has also been produced in Court.

8. It is contended that after the said complaint, petitioner was made to give in writing to the SHO that he shall marry the complainant. It is contended that in the said complaint, it is alleged that on 16.01.2016, the complainant and petitioner went to Himachal Pradesh, where in a Hotel, the petitioner gave soup to the complainant to drink, on drinking of which, she became unconscious and after that petitioner took advantage of the complainant and made physical relationships with her.

9. It is contended that the allegations in the complaint given to the SHO, Mandawali, original of which was handed over to the petitioner, and the allegations in the FIR are contradictory. It is contended that the allegations in both, however, show that the complainant out of her own free will had gone on a trip with the petitioner to Kangra, Himachal Pradesh. It is submitted that the allegations, as recorded in the note and the FIR, contend that the petitioner had intoxicated the respondent by giving her soup and then, made physical relationships. It is contended that both ex-facie contradict each other as at one place, it is contended that the

intoxicant was given on 16.01.2016 at Kangra, Himachal Pradesh and then physical relationship made and in the other, it is contended that the intoxicant was given on 07.04.2016 in a Guest House in Nirman Vihar, Delhi and then physical relationship made.

10. Learned counsel appearing for complainant, under instructions, does not dispute the note given to the SHO, Police Station Mandavali, however, contends that complainant was made to write the note by the Police Officers. A complaint, vis-a-vis the same has been given on 22.01.2018 to the Police Commissioner.

11. In contradiction, learned counsel for the petitioner submits out that this note was written on 15.10.2017, allegedly at the asking of the Police Officers and was produced before the Sessions Court on 11.01.2018, in the presence of the complainant as well as her counsel and no complaint was lodged immediately thereafter and it is only when the same was produced in these proceedings as Annexure-P-4 that the said complaint has been filed to the Commissioner of Police on 22.01.2018 and that the said note has been written on the dictation of one of the Police Officers. He submits that the note falsifies the entire allegations in the FIR.

12. Reliance is placed on the decision of a Coordinate Bench of this Court in *Jagdish Nautiyal versus State*, 2013[1] JCC 311, wherein in similar circumstances, the petitioner therein was admitted to anticipatory bail.

13. Learned Additional Public Prosecutor for the State contends that the petitioner has repeatedly promised to marry the respondent and in some

letters and diary, stated that she is his wife.

14. No doubt, the allegations made against the petitioner are very serious in nature, but severity of allegations is not the only consideration which should result in grant or denial of bail. The totality of the circumstances has to be seen before a person is granted or admitted to bail.

15. In the instant case, assuming that the allegations against the petitioner are correct, at best, a case of consent of the complainant having been obtained on the pretext of marriage would be made out. It may also be noticed that FIR has been lodged on 28.12.2017 relating to incidents, which allegedly occurred as far back as in April, 2016. The complainant alleges to have gone on a sightseeing trip to Kangra in January 2016. The complainant is alleged to have continued her relationship with the Petitioner even after the alleged incident of giving an intoxicant in Soup. The complainant does not deny having written the note on 15.10.2017, wherein the alleged incident of petitioner giving intoxicant in a soup is stated to have happened in January 2016 in Kangra. Though the contention is that the note was written on the dictation of a police officer, there is no such mention in the FIR which is lodged on 28.12.2017 and further no complaint about the same was made till 22.01.2018 after the first listing of this petition.

16. Further, the case of the prosecution that consent of the complainant for marriage was obtained by misrepresentation or on the guise of marriage would be established by the complainant entering into the witness box – prosecution leading appropriate evidence for which no custodial

interrogation or consequent recovery is required to be made.

17. Having regard to the aforesaid facts, I am inclined to grant anticipatory bail to the petitioner. In the event of arrest of the Petitioner, the Arresting office/IO/SHO shall release the petitioner on Bail, on his furnishing a bail bond in the sum of Rs.50,000/- with one surety of the like amount to the satisfaction of the Arresting Officer/I.O./SHO, subject to the following conditions that:-

- (i) the petitioner shall join investigation as and when so required by the Investigating Officer.
- (ii) the petitioner shall not do anything, which shall prejudice either the trial or any of the prosecution witnesses.
- (iii) the petitioner shall not make any efforts to contact the complainant, her family members or the witnesses or pressurise any of them.

18. At the request of the Investigating Officer, the complainant is directed to appear before the IO on 25.01.2018 at 3 PM at Police Station Preet Vihar.

24. Order *Dasti* under signatures of the Court Master.

SANJEEV SACHDEVA, J

JANUARY 24, 2018

‘Sd’