

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Judgment decided on: 01.11.2019

+ **BAIL APPLN. 501/2019**

Varun Kumar

..... Petitioner

Through: Mr. Davinder Hora and Mr.
Sikandar Khan, Advocates

versus

THE STATE OF DELHI

..... Respondent

Through: Ms. Neelam Sharma,
APP for State alongwith
W/SI Manisha Sharma,
P.S. Aman Vihar.

CORAM:

HON'BLE MR. JUSTICE BRIJESH SETHI

J U D G M E N T

BRIJESH SETHI, J (ORAL)

1. Vide this order, I shall dispose of anticipatory bail application filed on behalf of the petitioner Varun Kumar under section 438 Cr.P.C in FIR No. 1144/18, PS. Aman Vihar, U/s. 376 IPC.

2. Learned counsel for the petitioner has prayed for anticipatory bail on the ground that petitioner is innocent and falsely implicated. The false allegations of sexual assault have been leveled against the petitioner by the complainant though she has established relations with the petitioner on her own free will. However, in the course of time,

due to unstable behavior of the complainant, the petitioner ended the relationship and for this reason, the complainant has registered the present FIR which is false and fabricated.

3. It is submitted that petitioner has never promised the complainant for marriage. In fact it was the complainant who wanted to marry the petitioner but the same was never promised and assured by the petitioner. There is delay in registration of FIR, as FIR in the present case has been registered after one year of establishing sexual relationship. It is submitted that it was registered for the reason that parents of the petitioner had raised objection regarding the relationship of the petitioner with the complainant. It is lastly submitted that petitioner is willing to join the investigation as and when required. He has clean antecedent. It is, therefore, prayed that petitioner be released on bail in the event of his arrest.

4. The application is opposed by the Ld. APP for the State on the ground that the allegations against the applicant/ accused are serious in nature. The petitioner has established sexual relations on false pretext of marriage. It is submitted that memory card of the mobile

phone of the complainant is yet to be recovered from petitioner. He has, therefore prayed for dismissal of the anticipatory bail application.

5. I have considered the rival submissions. The prosecution version is that the complainant had met the petitioner for the purpose of job and they had become friends. Petitioner had made forcible physical relations with her on 08.05.2018 and thereafter he had assured her that he would marry her. There are allegations that petitioner took the complainant to his friend Sahil's house in Madipur and made physical relations with her there and had again given assurance for marriage. It is alleged that when the family members of the petitioner had come to know about the relationship of complainant and petitioner, they had asked him not to marry the complainant.

6. It is also alleged against the petitioner that during the course of investigation, mobile phone and audio cassettes for voice sample were seized and sent to FSL Rohini for opinion. The result of the same was received wherein FSL Expert has opined that voice exhibits of speakers marked as Ex.Q-1 & Ex.S-1 are voice samples of same person (i.e. Varun, petitioner). Similarly voice exhibits of speakers

marked as Ex.Q-2 & Ex.S-2 are voice samples of same person (i.e. complainant).

7. Ld. APP has also relied upon the transcript of call recording wherein at one point complainant has categorically stated that '*what should she do because the petitioner has deceived her*'. At another point the complainant has stated that '*if you (the petitioner) had to do this then why did you assured me (complainant) that you would marry me and I should go for abortion*'. During the conversation complainant has also alleged that petitioner has ruined her life. At another point petitioner has said that '*whatever you (complainant) want to do you can do. I (petitioner) had planned to go for court marriage with you (complainant) but I cannot go against my family.*'

8. The investigation is at a very initial stage. The allegations are grave. Prima facie it reveals that petitioner has sexually exploited the complainant and made physical relations with her against her consent on the false pretext of marriage. The Hon'ble Supreme Court in the case '**Anurag Soni vs. State of Chhattisgarh, 2019 SCC Online SC 509**' has distinguished between an offence of rape and consensual sex and has made the following observation in para 32;

Thus, there is a clear distinction between rape and consensual sex. The court, in such cases, must very carefully examine whether the complainant had actually wanted to marry the victim or had mala fide motives and had made a false promise to this effect only to satisfy his lust, as the later falls within the ambit of cheating or deception. There is also a distinction between mere breach of a promise and not fulfilling a false promise. If the accused has not made the promise with the sole intention to seduce the prosecutrix to indulge in sexual acts, such an act would not amount to rape. There may be a case where the prosecutrix agrees to have sexual intercourse on account of her love and passion for the accused and not solely on account of the misconception created by accused, or where an accused, on account of circumstances which he could not have foreseen or which were beyond his control, was unable to marry her despite having every intention to do. Such cases must be treated differently. If the complainant had any mala fide intention and if he had clandestine motives, it is a clear case of rape. The acknowledged consensual physical relationship between the parties would not constitute an offence under Section 376 of the IPC.

9. In view of the above allegation appearing on record, it is difficult to believe the fact that sexual relations between the parties were consensual. In view of the above discussion and keeping in mind the serious nature of allegations and also in view of the fact that

custodial interrogation of the petitioner would be required to recover the memory card of his mobile phone, no grounds for anticipatory bail are made out. The anticipatory bail application is, therefore, dismissed.

BRIJESH SETHI, J

November, 01, 2019

Amit

