

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

Order reserved on: 06.09.2019
Order pronounced on: 11.10.2019

+ **BAIL APPLN. 1913/2019**

Abhishek Kumar

..... Petitioner

Through: Mr. Lokesh Kumar Mishra
and Himanshu Sharma,
Advocates

versus

THE STATE OF DELHI

..... Respondent

Through: Mr G.M.Farooqui,
APP for State alongwith
W/SI Rekha Chauhan,
P.S. N.A. Nagar.

CORAM:

HON'BLE MR. JUSTICE BRIJESH SETHI

ORDER

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1. Vide this order, I shall dispose of anticipatory bail application filed on behalf of the petitioner Abhishek Kumar under section 438 Cr.P.C. r/w. section 482 CrPC.

2. Brief facts for disposal of the application are that an FIR No. 300/19 dt. 21.05.19 u/s. 376/328/313/506 IPC was registered on the statement of complainant in which she alleged that she had come in contact with the applicant through mobile app “happen” and friendly relations had developed between them. She further alleged that

accused had proposed to marry her in Nov. 2017 and she had accepted the proposal. However, on false pretext of marriage, applicant has established sexual relations with her for the last two years in his rented premises in new Ashok Nagar In Feb. 2019 when she became pregnant, the petitioner gave her pills to abort the child. It is further alleged that on 11.04.2019, she was made to drink alcohol by the applicant and thereafter he had raped her and prepared an obscene video. Her statement under Section 164 CrPC was also recorded on 22.05.2019 by the Court of Ms. Sujit Saurabh, MM, Delhi, in which she corroborated the facts narrated in the FIR.

3. Learned counsel for the petitioner has prayed for anticipatory bail on the ground that petitioner is innocent and falsely implicated. He has clean antecedent. The present FIR has been registered by the complainant with the sole intention to extort money. The victim is already married to one Rambir Rajput and her divorce with him by mutual consent has taken place on 14.05.2019 only and, therefore, her claim that the petitioner has obtained her consent on the pretext of marriage is absolutely false. Even the statement of husband of the complainant namely Ranbir Singh has been recorded by the

investigating agency. Ld counsel has further submitted that complainant/victim had claimed that she is unmarried and had proposed to the petitioner for marriage. Thus, in fact the petitioner has been cheated by the prosecutrix on false pretext of marriage. It is further submitted by Ld counsel that as per FIR, the victim is in relationship with the petitioner since November 2017 and they have resided together till 15.04.2019. This fact clearly reveals that she was a consenting party. It is further submitted that the FIR has been registered after one and half year of the alleged incident.

4. It is next submitted by Ld. counsel that prior to the registration of FIR i.e on 17.04.2019, 25.04.2019 and 29.04.2019, the petitioner and his mother have already given a written complaint against the prosecutrix. Subsequently, on 21.05.2019, the petitioner has also moved an application u/s. 156 (3) Cr.P.C. against the prosecutrix for registration of FIR before the court of CJM, Meerut, U.P. The petitioner has also given a written complaint to Delhi Police on 21.05.2019. It is further submitted that an anticipatory bail application was moved before Ld ADJ and vide order dated 11.06.2019, the Ld. ASJ had granted interim protection to the

petitioner with the direction to join the investigation as and when required. The petitioner had also joined the investigation and fully cooperated with the investigating agency. However, on 01.07.2019, the Ld. ASJ dismissed the bail application of the petitioner on the basis of whatsapp chat handed over by the complainant to the investigating agency. The said whatsapp chat was, however, never made by the petitioner. The petitioner had thereafter moved an application u/s. 91 CrPC before the court of Ld. ACMM and was made a prayer to seize the mobile of complainant and investigate the matter. The IO had filed reply which prima facie shows that the complainant had mislead the investigating agency as well as the Court with the sole intention to get the bail application dismissed. The second anticipatory bail application of the petitioner was again dismissed by the court of Ld. ASJ without appreciating the settled law and change in the circumstances. It is next argued that relationship between the complainant and the petitioner was consensual and it can be established without custodial interrogation. It is, therefore, prayed that petitioner be granted anticipatory bail/ interim protection to join the investigation and SHO/IO be directed

to release the petitioner in the event of his arrest in FIR No. 300/2019, u/s. 376/313/328/506 IPC, PS New Ashok Nagar, Delhi.

5. 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 victim was being raped by the petitioner/ accused for the last one and half year on the pretext of marriage and was also threatened on whatsapp chatting that she would be killed. He has, therefore prayed for dismissal of the bail application.

6. I have considered the rival submissions and am of the decision that no grounds for anticipatory bail are made out keeping in mind the nature of the offence alleged to have been committed by the petitioner. The petitioner has sexually exploited the complainant for about one and a half year on the false promise of marriage with the result that she had become pregnant. Thereafter, the petitioner had administered abortion pills to the complainant and there are allegations that he has also threatened the victim. The fact whether whatsapp messenger chat was false or correct will only be established when the FSL report is received. Both the mobile phones i.e. of the victim and petitioner/ accused have been seized for

verifying the authenticity of the chat. The investigation is at a very initial stage. The allegations are grave. The Hon'ble Supreme Court in the case '**Anurag Soni vs. State of Chhattisgarh, 2019 SCC Online SC 509**' has distinguished between 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.

7. In the present case, the petitioner/ accused has committed sexual intercourse with the victim several times on the false pretext

of marriage. There are allegations that he has sedated her and thereafter committed rape and has made her obscene video. In view of the above facts, it is difficult to believe the fact that sexual relations between the parties were consensual. The submission of the petitioner that no false promise of marriage was made by him and in fact he stands cheated is a matter of investigation. At this stage, it is difficult to hold that the relationship between the parties was consensual in nature.

8. 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 obscene video, no grounds for anticipatory bail are made out. The anticipatory bail application is, therefore, dismissed.

BRIJESH SETHI, J

OCTOBER 11, 2019

Amit