

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**
Judgment delivered on: 27.11.2019

+ BAIL APPLN. 2264/2019

Nitesh

..... Petitioner

Through: Mr. Kartickay Mathur,
Advocate.

versus

STATE (GOVT OF NCT OF DELHI) Respondent

Through Ms. Neelam Sharma,
APP for State.

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 a bail application filed u/s. 439 CrPC by the petitioner **Nitesh** in FIR No. 138/2019 u/s. 376/313 IPC, P.S. Mundka.

2. Ld. Counsel for the petitioner has prayed for bail on the ground that petitioner is innocent and has been falsely implicated. He was arrested on 12.04.2019 on false allegations leveled by complainant and the prosecution has filed a chargesheet on 04.06.2019 u/s. 376/313 IPC against him.

3. Ld. APP for the state has opposed the bail application on the ground that allegations leveled against the petitioner are serious in nature. He has, therefore prayed for dismissal of the bail application.

4. I have considered the rival submissions. Learned Counsel for the petitioner has relied upon two decisions of a coordinate Bench of this Court 1) '**Raj Kumar vs. The State (govt. of NCT of Delhi), Bail Appl. No.2656/2017**' and 2) '**Prem Prakash Chaudhary vs. State, Bail Appl. No. 157/2018**'. I have gone through the above case law. There is no quarrel with the proposition of law laid down therein. However, these judgments are distinguishable on the basis of facts and circumstances stated therein.

5. According to prosecution, on 06.04.2019 a zero FIR was received from PS Women Police Station Jhajjar, Haryana which was registered on the statement of complainant Smt. 'S' @ 'V'. She has alleged in her complaint that she was working as a dancer in stage shows at various places. On 28.04.2018, in a stage performance in Gaurakhpur, U.P., she came in contact with petitioner who was working as DJ operator. Thereafter, they exchanged their mobile numbers and started talking to each other. When she returned to Delhi

after two days, petitioner Nitesh also came to Delhi with her and forcibly made physical relations without her consent on the pretext of marrying her. Thereafter, they started living in a rented house as husband & wife and she became pregnant but petitioner got the pregnancy aborted by giving her medicines. It is further alleged that in the month of October 2018, petitioner went to his native village stating that he requires the consent of his family members for marriage but he did not return to Delhi and when she called him, he neither picked up her calls nor called her back. During the course of investigation, statements of the complainant u/s. 161 CrPC and u/s. 164 CrPC were recorded. The complainant has corroborated the version of her complaint in her statement recorded u/s. 164 CrPC.

6. 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;

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 is alleged to have committed sexual intercourse with the complainant on the false pretext of marriage. In view of the statement of victim recorded under Section 164 Cr.P.C., prima facie, it is difficult to believe the petitioner's version that sexual relations between the parties were consensual. Thus, keeping in mind the nature of allegations, no grounds for bail are made out. The bail application is, therefore, dismissed.

BRIJESH SETHI, J

NOVEMBER 27, 2019

Amit