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

+ **BAIL APPLN. 2330/2019**

ASHESH SHARMA

..... Petitioner

Through: Mr. Rajesh Kumar Sharma, Advocate
versus

THE STATE OF DELHI

..... Respondent

Through: Ms. Neelam Sharma,
APP for State alongwith
SI Mahesh Kumar, PS
Nabi Karim, Ms. Anushree,
Complainant with her father.

CORAM:

HON'BLE MR. JUSTICE BRIJESH SETHI

ORDER

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18.09.2019

1. Vide this order I shall dispose of an anticipatory bail application filed by the petitioner in FIR No. 267/2019 u/s. 376/328/506 IPC, P.S. Nabi Karim.
2. Ld. Counsel for the petitioner has prayed for anticipatory bail on the ground that petitioner is innocent and has been falsely implicated. He is ready to join the investigation as and when required by the IO.
3. The prosecution version in brief is that complainant had come in contact with the petitioner through Shaadi.com. On 23.08.2018, the petitioner who is working as ASI in CRPF had started talking with her and had asked her to come to New Delhi Railway Station in connection with their marriage. He had assured her that he would marry her in November,

2019. He had taken her to a nearby hotel, named GEESON. She was taken to a room where she was asked to drink water and after drinking water she had lost consciousness and when she had regained her senses she did not have any cloth on her body. At that time, the petitioner was upon her and his penis was in her vagina. She had objected to the same and asked him as to why he has established sexual intercourse against her wish. He had, however, assured that he would marry her in November, 2019. Thereafter she was again called in Delhi and was taken to Hotel OYO 14387, Sector-07, Dwarka. There also petitioner had established sexual relations with her on the pretext of marriage. She has alleged that sexual relations were established by the petitioner thereafter also on the pretext of marriage. However, the petitioner has refused to marry her despite the assurance given by him to marry her and had in fact even threatened her with dire consequences if she files a complaint anywhere.

4. Ld. APP for the State has opposed the anticipatory bail application on the ground that allegations against the accused are serious in nature. Statement of complainant has been recorded under Section 164 CrPC also wherein she has corroborated her statement given to the IO. The petitioner is also not joining the investigation and is evading arrest.

5. Ld. Counsel for the petitioner has, however, argued that it is a case of consensual sex and in support of his argument, learned counsel for petitioner has relied upon the following judgments;

- i. Mahesh Balkrishna Dandane v. State of Maharashtra, 2014 SCCOnline Bom 348.
- ii. Dr. Dhruvaram Murlidhar Sonar v. The State of Maharashtra & Ors., CRL. A. No. 1443/2018 @ SLP (Crl) No. 6532/2018

- iii. Pramod Suryabhan Pawar v. State of Maharashtra & Anr., CrI.A. 1165 of 2019 @ SLP (CrI) No. 2712/2019
- iv. Vikash v. The State of Delhi, 2007 [3] JCC 2336.

6. I have considered the rival submissions and perused the authorities submitted by Ld. Counsel and am of the opinion that these are distinguishable on the basis of facts and circumstances stated therein. The allegations against the petitioner are serious in nature. He has established sexual relations with the victim on the false pretext of marriage. Perusal of FIR reveals that first time when the victim had met the petitioner at New Delhi Railway station, she was taken to a room of a hotel and asked to drink water and she had lost consciousness and when she had regained consciousness she did not have any cloth on her body and the petitioner was upon her and his penis was in her vagina. The, intention of the petitioner, therefore, right from the beginning was not good and his subsequent conduct of establishing sexual relations on false pretext of marriage further prima facie establishes the fact that it was not a case of consensual sex.

8. The above acts of the petitioner cannot by any stretch of imagination be said to be a case of consensual sex. The victim in fact categorically stated that petitioner has established sexual relations with her 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 described the difference between rape and consensual sex and held in para 32 as follows;

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. As discussed in para 6, the petitioner has committed sexual intercourse with the victim many times on the false pretext of marriage. He has sedated her and raped her and continued establishing sexual relations on false pretext of marriage. In view of the facts of the case and statement of the victim given to the IO and before the Magistrate u/s. 164 CrPC, prima facie, it is difficult to believe the fact that sexual relations between the parties were consensual.

10. In view of the above discussion and law laid down by Hon'ble Supreme Court and keeping in mind the nature of allegations, no grounds for anticipatory bail are made out. The anticipatory bail application is, therefore, dismissed.

BRIJESH SETHI, J

SEPTEMBER 18, 2019

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