

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

+ Bail Appln. 3012/2019

Reserved on: 09.12.2019

Pronounced on : 28.01.2020

SHAILENDRA KUMAR YADAV

..... Petitioner

Through: Mr. Mohit Mathur, Sr. Adv. with Mr.
Badar Mahmood, Adv.

versus

STATE

..... Respondent

Through: Ms. Rajni Gupta, APP for the State
with SI Ajay and W/SI Sheela, P.S
Pahar Ganj.

Ms. Saahila Lamba, Adv. for
complainant with complainant in
person.

CORAM:

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

RAJNISH BHATNAGAR, J.

1. The petitioner has filed the present petition with the following prayer:-

“a. Direct/Order the release of the Petitioner on bail, in the event of his arrest, in the case in case FIR No. 319/2019, U/s 376 IPC registered at P.S.Pahar Ganj on such conditions as this Hon'ble Court may deem fit and/or;

b. Pass any other order(s) which this Hon'ble Court may deem fit and proper under the facts and circumstances of this case.”

2. In brief, the case of the prosecution is that the complainant, in her complaint alleged that the petitioner proposed her for marriage and after that they went to Jammu where petitioner made physical relations with her 2-3

times on the pretext of marriage. It is alleged that on 22.6.2019 her Roka was also done with the petitioner at All Heaven Banquets, B-3, Lawrence Road, Delhi, and after that petitioner again made physical relations with her multiple times at different places in Delhi on the pretext of marriage. It is alleged that thereafter the petitioner and his family started arguing with her on trivial matters regarding marriage which showed that petitioner never intended to marry the complainant, and was only making false promise of marriage. It is alleged that on 8.11.2019 the petitioner called the complainant on mobile phone and stated that if he married her, his family members would drive him out of the house. It is alleged that when the father of the complainant talked to mother of the petitioner, she finally refused for marriage and when on the same day parents of the complainant went to the house of the petitioner, the parents of the petitioner insulted her parents and they also made a PCR call. The complainant got very humiliated and she attempted to commit suicide. On 14.11.2019, the statement of the complainant was recorded under Section 164 Cr.P.C, wherein she had corroborated her earlier version. The complainant again gave a complaint on 18.11.2019 alleging that the petitioner tried to induce and influence her in many ways and conveyed her that her future will get spoiled if she proceeded in the matter.

3. I have heard the learned senior counsel for the petitioner, learned APP for the State, assisted by the counsel for the complainant. I have also perused the status report.

4. It is urged by the learned senior counsel for the petitioner that the petitioner never made false promise for marriage. He further submits that on 22.6.2019 Roka ceremony was performed at All Heaven Banquets, B-3,

Lawrence Road, Delhi, which was attended by close relatives of both the sides and all the expenses of Roka ceremony were borne by the parents of the petitioner. He further submits that the petitioner and his parents were very serious about this marriage, and therefore, they had performed the Roka ceremony in the presence of the relatives of both sides with great pomp and show. He further submitted that the complainant accompanied the petitioner to different places of her own free will and the petitioner had never made any physical relations with the complainant as alleged in the FIR otherwise there was no reason for the complainant to refuse to undergo medical examination. It is further submitted by the learned senior counsel for the petitioner that parents of the complainant had visited the house of the petitioner on three occasions from 6.11.2019 to 8.11.2019 insisting them to make the payment of Banquet Hall, which they have selected for the marriage functions. He further submitted that the parents of the complainant threatened the parents of the petitioner that if they would not book the Banquet Hall for the marriage function on 9.11.2019 then they would file complaint against the petitioner for rape and suicide. The father of the petitioner immediately filed a complaint with the SHO, North Rohini, Delhi on 9.11.2019, which is registered as DD No. 04B and again on 10.11.2019 and 12.11.2019 which are registered as DD No. 37 B and DD No. 24B respectively. It is argued by the learned senior counsel for the petitioner that petitioner has roots in the society, and it is a case where the proposal for marriage has gone soured between the parties and for that reason the petitioner has been falsely implicated.

5. On the other hand, it is urged by the learned APP for the State that the allegations against the petitioner are grave and serious in nature. The

petitioner never had any intention to marry the complainant and after exploiting her emotionally he has made physical relations with her numerous times. It is further urged that NBWs against the petitioner have been issued and he does not deserve bail.

6. 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 denied bail.

7. Learned APP for the State has laid much stress on the point that since the NBWs have been issued against the petitioner, so he is not entitled to grant of relief from this Court.

8. I do not agree with the contention of learned APP for the State that merely because NBWs have been issued against the accused that this should be a sufficient ground for denying the grant of anticipatory bail if petitioner is otherwise able to make out a case for grant of anticipatory bail to him. even otherwise every case has its own peculiar facts and circumstances. Every reasonable person who has approached the Court for grant of anticipatory bail will keep away from the investigation for sometime so that his bail application does not become infructuous.

9. Now, in the instant case, Roka ceremony between the petitioner and the victim had taken place on 22.6.2019 in a reputed Banquet Hall namely 'All Heavens', and according to the petitioner, all the expenses were borne by his parents. The relatives of both the sides i.e from the side of the petitioner and from the side of the victim attended the Roka Ceremony. So it is not a simple case of false promise of marriage. The petitioner and his parents had gone many steps ahead in this regard and performed a Roka

ceremony with much pomp and show which is evident from the photographs placed on record in this petition and this also goes to show their seriousness about the marriage and the fact of roka is also not disputed by the respondent. Thereafter some disputes arose between the petitioner and respondent and their respective parents on account of some fixation of venue and other marriage arrangements, because of which, it seems that their relations became sour.

10. Now, even if, the contention of the respondent that her consent was obtained by mis-representation or in a guise of marriage would be established by the complainant when she enters into the witness box as prosecution witness and by leading appropriate evidence in this regard. Reliance in this regard can be placed upon the judgments of this Court in the case titled as ***Prem Prakash Chaudhary Vs. State 2018 SCC Online Del 6764*** and ***Jagdish Nautiyal Vs. State 2013 1 AD (Delhi) 475***.

11. It is also not the case of the prosecution that any recovery is to be effected from the petitioner. Therefore, keeping in view the facts and circumstances of the case, this Court is inclined to grant anticipatory bail to the petitioner. In the event of arrest of the petitioner, the Arresting Officer/IO/SHO shall release the petitioner on bail, on his furnishing a bail bond in the sum of Rs.50,000/- with one surety in the like amount to the satisfaction of the Arresting Officer/IO/SHO concerned, subject to the following conditions that:-

- (i) The petitioner shall join investigation as and when 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 pressurize any of them.

12. The bail application is disposed of accordingly with the aforesaid observations.

13. Nothing stated hereinabove shall tantamount to the expression of any opinion on the merits of the case.

RAJNISH BHATNAGAR, J

JANUARY 28, 2020/ib