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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **BAIL APPLN. 1053/2020 and CRL. M.B. 6412/2020**

KARTIK TEHLAN Petitioner
Through: Ms. Manisha Parmar and Mr. Praveen
Kumar, Advocates.

Versus
STATE Respondent.
Through: Ms. Meenakshi Dahiya, APP for State
with ASI Parwati, P.S. Adarsh Nagar.
Ms. Manika Tripathi Pandey,
Advocate for Complainant.

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

(VIA VIDEO CONFERENCING)

ORDER
% **12.06.2020**

1. The present bail application has been filed under Section 439 Cr.P.C. seeking bail in FIR No. 425/2020 under Section 376 IPC registered at P.S. Adarsh Nagar.
2. Ms. Manisha Parmar, learned counsel for the petitioner submits that the petitioner has been falsely implicated in the present FIR and is in judicial custody since 07.05.2020. She submits that both, the petitioner and the prosecutrix are aged about 26 years. The prosecutrix, a makeup artist, met the petitioner through a Facebook request sent by him on 05.04.2020. A relationship between the petitioner and the prosecutrix developed and consensual physical relations were made between them at the office of the petitioner. Learned counsel refers to the portion of the FIR where it was

stated that the prosecutrix visited the office of the petitioner on the night of 30th April, 2020 between 1-2 am, when the physical relations were maintained.

3. She further submits that the allegations about getting the complainant drunk and then making forcible physical relations with her, are false and an afterthought. In support of her submission, she has referred to various Facebook chat messages annexed along with the bail application exchanged between the petitioner and the prosecutrix. More specifically, learned counsel has referred to the Facebook chats messages sent by the prosecutrix where she had offered various brands of liquor to the petitioner along with their images. She has also referred to the message stated to be dated 06.05.2020 where it was stated that *'It's better that we should sort it out peacefully. Otherwise I will take a strict action against you and your family. If you do not want any trouble, apologies your mistakes that you used me and will continue this relationship'*. On the basis of the above message, it is submitted that the prosecutrix rather wanted to continue the relationship with the petitioner.

4. It has been further submitted that at no point of time either during the meetings or in the chat messages there was any offer of marriage made by the petitioner to the prosecutrix. She, on instructions, submits that whereas the petitioner has submitted his mobile phone to the Investigating Officer however, the prosecutrix did not provide her mobile phone. Also, during the preparation of her MLC, the prosecutrix had refused her medical examination.

5. Lastly, it was submitted that the prosecutrix had levelled similar allegations against one Yug Arora in FIR No. 0141/2020 registered under

Sections 354/354D/509/506 IPC at P.S. Model Town. Further, the prosecutrix herself is an accused in FIR No. 0449/2016 under Sections 354C/34 IPC read with Sections 66E and 67A of the IT Act, P.S. Adarsh Nagar where allegations relate to uploading of objectionable images on the internet of the wife of the co-accused in the said case.

6. Learned counsel has relied upon the decision in Uday v. State of Karnataka reported as **(2003) 4 SCC 46**, Deelip Singh alias Dilip Kumar v. State of Bihar reported as **2005 SCC (Cri.) 253** and Rohit Tiwari v. State reported as **2016 SCC OnLine Del 3159**, etc.

7. Per contra, Ms. Meenakshi Dahiya, learned APP for the State, duly assisted by the learned counsel for the complainant, has vehemently opposed the bail application. She contends that the prosecutrix has supported her allegations levelled in the FIR in her statement recorded under Section 164 Cr.P.C. She, on instructions, submits that though the prosecutrix refused to hand over her mobile phone but the petitioner's mobile phone has been seized and sent to FSL however, report is still awaited. It is further submitted that the charge-sheet will be filed once the FSL report is received. So far as the other two FIRs are concerned, it is stated that Yug Arora was harassing the prosecutrix which made the prosecutrix to file a complaint against him. So far as FIR No. 449/2016 is concerned, it is stated that in fact, the complainant in that case had filed a complaint against her own husband. The prosecutrix was roped in as a co-accused as the wi-fi used in uploading the pictures belonged to her, which was rather given in good faith.

8. I have heard the learned counsels for the parties and have gone through the entire material placed on record. On the last date of hearing, the State was directed to file an additional status report as to whether the

prosecutrix refused to hand over her mobile. A status report has been filed wherein the aforesaid fact has been confirmed. However, it has been stated that the prosecutrix is now ready to provide her mobile data in a pen drive.

9. In Pramod Suryabhan Pawar v. State of Maharashtra and Another reported as **2019 SCC OnLine SC 1073**, the Supreme Court made the following observations:

"14. This Court has repeatedly held that consent with respect to Section 375 of the IPC involves an active understanding of the circumstances, actions and consequences of the proposed act. An individual who makes a reasoned choice to act after evaluating various alternative actions (or inaction) as well as the various possible consequences flowing from such action or inaction, consents to such action....."

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20. Where the promise to marry is false and the intention of the maker at the time of making the promise itself was not to abide by it but to deceive the woman to convince her to engage in sexual relations, there is a "misconception of fact" that vitiates the woman's "consent". On the other hand, a breach of a promise cannot be said to be a false promise. To establish a false promise, the maker of the promise should have had no intention of upholding his word at the time of giving it. The "consent" of a woman under Section 375 is vitiated on the ground of a "misconception of fact" where such misconception was the basis for her choosing to engage in the said act...."

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22. To summarise the legal position that emerges from the above cases, the "consent" of a woman with respect to Section 375 must involve an active and reasoned deliberation towards the proposed act. To establish whether the "consent" was vitiated by a "misconception of fact" arising out of a promise to marry, two propositions must be established. The promise of marriage must have been a false promise, given in bad faith and with no intention of being adhered to at the time it was given. The false promise itself must be of immediate relevance, or bear a direct nexus to the woman's decision to engage in the sexual act."

10. Both the petitioner and the prosecutrix are stated to be self-employed and *prima facie*, a perusal of the chat messages, which were not denied by the complainant's counsel, would show that both the petitioner and the prosecutrix having sufficient maturity, were in a consensual relationship. The physical relations were repeatedly made at the office of the petitioner.

11. In the facts and circumstances of the case, this Court is inclined to admit the petitioner on bail on his furnishing a personal bond in the sum of Rs.50,000/- with one surety of the like amount to the satisfaction of the concerned Jail Superintendent/Duty M.M. subject to the following conditions :-

- (i) The petitioner shall not try to get in touch with the prosecutrix.
- (ii) The petitioner shall not leave the jurisdiction of NCT of Delhi during the period of his release without prior intimation to the IO and after filing of the charge-sheet,

without the prior permission of the concerned court.

- (iii) During the pendency of the investigation/trial, the petitioner shall keep his mobile/landline number operational during the period of his release and shall report to ASI Parvati (Mob-9013933905) on every Monday during the period of his release.

12. The application stands disposed of in the above terms. CRL.M.B. 6412/2020 is also disposed of as infructuous.

13. A copy of this order be communicated to the concerned Jail Superintendent electronically for information and necessary compliance.

14. Nothing stated herein above shall be construed as an expression on the merits of the case. The observations are only *prima facie* and have been made to dispose of the present bail application.

MANOJ KUMAR OHRI, J

JUNE 12, 2020

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