

\$~10

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

+ BAIL APPLN. 1214/2020

PRATIK KANNOUJIYA

..... Petitioner

Through: Mr.Rahul Sharma and Ms.Abhilasha
Shrawat, Advocates.

versus

STATE (GOVT OF NCT OF DELHI)

..... Respondent

Through: Ms.Radhika Kolluru, APP for State
along with IO SI Sharanya Salim
(M-9717548338), P.S. Laxmi Nagar,
Delhi
Ms.Pallavi S.Kansal, Advocate for the
prosecutrix.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

(VIA VIDEO CONFERENCING)

ORDER

%

06.07.2020

1. The present bail application has been filed on behalf of the petitioner seeking regular bail in FIR No.0264/2020, registered under Section 376 IPC at Police Station Laxmi Nagar, Delhi.
2. Learned counsel for the petitioner submits that the petitioner is falsely implicated in the present case. He submits that both the petitioner and the prosecutrix are well educated and aged about 30 years old. While the petitioner is a graduate, the prosecutrix is an MBA. He has referred in detail to the contents of the FIR as well as the statement of the prosecutrix recorded under Section 164 Cr.P.C., the particulars of which are mentioned in the Status Report to submit that as per the admitted case, the prosecutrix

and the petitioner were known to each other since the year 2011 and prior to entering into a relationship, they were in relationship with their respective partners. Both the petitioner as well as the prosecutrix were aware of the status of each other's relationship. In fact, the petitioner used to bring his girlfriend at the house of the prosecutrix and used to stay there. In the mean time, the prosecutrix, briefly entered into another relationship with another boy. Subsequently, they broke up with their respective partners and thereafter started dating each other. They also exchanged their intimate photographs on WhatsApp. Subsequently, one day the petitioner came to the house of the prosecutrix and physical relationship was made. Thereafter, the physical relations were made on number of occasions and were lastly made on 25.11.2019 at the residence of the petitioner.

3. He further submits that there is a huge delay of over five months in lodging the FIR. According to him, as per the allegations, the last time physical relations were made on 25.11.2019 whereas the present FIR was registered only on 16.05.2020.

4. He has also referred to the communication dated 30.12.2019 signed by both the parties wherein it was stated by the prosecutrix that even if the petitioner gets a job and does not marry her, she will not have any grievance against him.

5. Lastly, it is stated that at the time of her medical examination, the prosecutrix has refused to undergo internal medical examination.

6. On the other hand, Ms.Radhika Kolluru, learned APP for the State, duly assisted by Ms. Pallavi Kansal, learned counsel for the complainant, has vehemently opposed the bail application. She submits that physical relations were made on the false promise of marriage. There is no delay as

the petitioner continued to promise the prosecutrix to marry her but eventually refused to marry her on 04.05.2020 when they were supposed to marry each other on the ground that his father has suffered a heart attack. It is stated that the charge-sheet has been filed and the mobile phone of the petitioner could not be recovered as the victim herself had stated that it was damaged and sold through an online app.

7. Both the petitioner and the prosecutrix are mature working professionals being 30 years of age. Before entering into a relationship, the parties were aware of each other's status, as both were involved in separate relationships with their respective partners. The physical relations were lastly made on 25.11.2019 whereas the petitioner refused to marry in May 2020 as his father suffered a heart attack.

8. 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....."

xxx

xxx

xxx

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....

xxx

xxx

xxx

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."

9. In the totality of the facts and circumstances and without commenting on the merits of the case, the petitioner is admitted to 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 further conditions:-

(i) The petitioner will not leave NCT of Delhi without prior permission of the concerned Court.

(ii) The petitioner shall not directly or indirectly get in touch with the complainant or any other prosecution witness and shall not try to tamper with the prosecution evidence.

(iii) The petitioner will provide his mobile phone number to the IO, which he undertakes to keep operational at all times. In case of change in residential address and mobile phone number, shall inform the same to the concerned IO.

(iv) The petitioner shall regularly appear before the Trial Court.

10. The application stands disposed of accordingly.

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

MANOJ KUMAR OHRI, J

JULY 06, 2020

'dc'