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

+ **BAIL APPLN. 1700/2020**

PUSHP RAJ YADAV Applicant
Through **Mr. Anirudh Yadav, Advocate**

versus

THE STATE Respondent
Through **Ms. Meenakshi Dahiya, APP with
Ms. Pinki, IO & Complainant in
person**

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

ORDER

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28.08.2020

Hearing has been conducted through Video Conferencing.

Present application has been filed under Section 438 Cr. PC for grant of anticipatory bail in case FIR No. 251/2020, under Sections 376/323/506 IPC, Police Station, Maurya Enclave.

Case of the prosecution as revealed from the Status Report is that on the basis of statement of prosecutrix the present FIR was registered on 09.06.2020. In her statement, she raised allegations that she met the Applicant through a friend in 2018. Eventually, they became friends and started meeting daily. In January, 2019 one day she was alone at home and the Applicant called her to meet him. When he reached her home he got along with him some cold drinks and pizzas, which she consumed and felt dizzy and later became unconscious. Taking advantage, the Applicant committed rape. When she regained her consciousness, she found that there were no clothes on her body and he was lying beside her on the bed. The

prosecutrix started crying and yelling at him but he consoled her by promising to marry, as he loved her.

As the prosecution case goes, the Applicant made many false promises to the prosecutrix and even introduced her to his parents. He even spoke to her parents about his intent to get married. However, subsequently he started demanding dowry of Rs. 30 lakhs. The Applicant had some inappropriate photographs and videos of the prosecutrix and started blackmailing her. He and his brother threatened and abused her on phone that if she went to police or anyone to seek help there would be dire consequences.

The prosecutrix was medically examined where she refused to undergo internal examination. Statement under Section 161 Cr.PC of the prosecutrix was recorded. As per the Status Report on 10.06.2020, statement under Section 164 Cr.PC was recorded where the prosecutrix supported the version in the complaint and added that she was made to undergo abortion at the age of 19. Section 313 IPC was thereafter added. Status Report reveals that the prosecutrix could not produce any documents relating to her abortion but produced an ultra sound report, photocopy. Status Report further indicates that the Applicant absconded from arrest and NBWs had to be issued. On 14.07.2020 pursuant to the orders of this Court, the Applicant had joined investigation. He again came for investigation on 16.07.2020 but did not cooperate. On 18.07.2020, he joined investigation and produced his mobile phone which has been taken into possession by the concerned IO and is yet to be sent to FSL. Date of birth of the prosecutrix has been verified from her school. Potency test of the Applicant has been carried out on 20.07.2020.

Learned counsel for the Applicant submits that the Applicant is innocent and has been falsely implicated. Prosecutrix and the Applicant were good friends. She would regularly chat with the Applicant but there is no mention in any of the WhatsApp chat that the Applicant had ever promised to marry her. The relationship between the two was consensual without any promise to marry. In fact, it was the prosecutrix who used to send him objectionable photographs from her mobile phone many a times even in odd hours to which the Applicant would always object. Seeing her behaviour, the Applicant tried to break his relationship with her and keep himself away which provoked the prosecutrix and she started threatening him to implicate in a false case. Applicant has no knowledge of the alleged abortion and has no connection with it either.

It is further argued that the Prosecutrix is an educated girl, 21 years of age and understood what was good or bad for her and in a similar situation the Bombay High Court in ***Sumit Siddramappa Patil vs. State of Maharashtra, decided on 10.03.2016*** and in ***Sqnlder Rohit KumarTomar vs. State of NCT of Delhi, Bail Appln. No.240/2016*** this Court, granted anticipatory bail. Learned Counsel further contends that a promise to marry which is later denied does not amount to commission of offence of rape and at best can be a breach of promise for which the Complainant can seek a civil remedy. Reliance is placed on the judgements of the Supreme Court in

- (i). ***Dilip Singh vs . State of Bihar, (2005) 1 SCC 88***
- (ii). ***Harish Kumar vs. State, 2010 (4) JCC 2371***

It is argued that in case of ***Akshay Manoj Jaisinghani vs. State of Maharashtra in Bail Application No.2221/2016 decided on 09.01.2017*** it was held that once there is a consent, the charge of rape cannot be made out.

In ***Vishal Grover vs. State, 2017 (1) JCC page 19*** it has been held that promise of marriage for establishment of physical relation is a matter of trial and anticipatory bail can be granted. To the same effect is the decision of this Court in ***Swati Aggarwal vs State, 2017 (1) LRC 342 (DELHI)***.

Learned counsel also relies on judgement in ***Jayanti Rani Panda vs. State of West Bengal, 1984 Crl. (J) 1535*** wherein it is held that if a grown up girl consents to sexual intercourse with a person who has promised to marry her, it would not amount to consent under misconception of the fact under Section 90 IPC and sexual intercourse in these circumstances would not be an offence of rape.

The Petitioner further argues that the prosecutrix had refused to undergo any medical examination and reliance was placed on the decision in ***Deepak Dua vs. State of NCT of Delhi, Bail Appln. No.2369/2016*** where medical examination was refused by the prosecutor therein and the Applicant was held entitled to be released on anticipatory bail.

It is also argued that as per the complaint the first physical relation between the Applicant and the prosecutrix was in January, 2019 but yet she opted to register a complaint only on 09.06.2020 which is after 1½ years from the alleged incident. Delay in lodging the FIR has not been explained by the complainant.

It is submitted that Applicant is a person of clean antecedents having deep roots in the society and undertakes to join investigation whenever required. Applicant also undertakes not to tamper with evidence or threaten the witnesses as also not to leave the jurisdiction of this Country.

It is submitted that once the interim protection was granted by this Court, he had joined the investigation and the necessary recovery has been

made and his custodial interrogation is no longer required which is supported by the Status Report.

Ms. Meenakshi Dahiya, learned Additional Public Prosecutor opposes the bail application on the ground that the allegations against the Applicant are very serious. Prosecutrix is a vulnerable witness and there are chances that the Applicant may induce or threaten her to dissuade her from disclosing further facts. Ms. Dahiya, however, further submits that the investigation is complete and recovery of the mobile phone has been effected.

Prosecutrix primarily narrated the sequence of events as they occur in the FIR. She submits that she has been cheated by the Applicant who on the false pretext of marrying her had physical relations with her, which even led to her getting pregnant and she had to undergo abortion. She submits that the Applicant is even now threatening her and therefore the bail application should be dismissed.

I have considered the rival submissions put forth by the learned counsels for the parties and the Complainant.

It needs to be noticed that the allegation of rape begins from the first incident in January, 2019 but the FIR was registered on 09.06.2020. Even after the said alleged incident the Applicant and the Prosecutrix were regularly meeting each other and no complaint of any kind was made by the Prosecutrix either to her own family or to the Police. Even on the first day of the alleged date of incident, the Prosecutrix did not raise any alarm or inform the Police. Being 21 years of age the Prosecutrix apparently knew what was good or bad for her. Whether or not the physical relationship between the parties continued for a long time would be a matter of trial.

No doubt the allegations made against the Applicant are serious in nature but as held by the Supreme Court in ***Gurbaksh Singh Sibbia vs. State of Punjab, (1980) 2 SCC 565*** severity of the allegations cannot be the only consideration for granting or denying the bail. The totality of circumstances shall have to be seen. The case of the prosecutrix that consent of the complainant for marriage was obtained by mis-representation and on a false promise of marriage, would be established once the prosecutrix steps into the witness box and leads evidence. However, no custodial interrogation is required for the said purpose. As per the Status Report the recovery of the mobile phone has been made from the Applicant and the same shall be sent to the FSL, shortly. During the interim protection granted by this Court, the Applicant has joined investigation.

Having regard to the aforesaid facts, I am inclined to grant Anticipatory Bail to the Applicant. In the event of arrest of the Applicant, the Arresting officer / I.O. / SHO shall release the Applicant on bail on his furnishing a bail bond in the sum of Rs.50,000/- with one surety of the like amount to the satisfaction of the I.O/ SHO. Grant of bail shall be subject to the following conditions :-

- (i). Applicant shall join investigation as and when so required by the IO.
- (ii). Applicant shall not do anything which prejudices the trial or tamper with evidence.
- (iii). Applicant shall not contact the prosecutrix, her family members or

any witness and shall not pressurize them or extend any kind of threat.

It is made clear that the Court has not expressed any opinion on the merits of the case and the observations herein are only for the purpose of deciding the present anticipatory Bail Application.

The petition is allowed in the aforesaid terms.

JYOTI SINGH, J

AUGUST 28, 2020
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