

\$~16

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

+ **BAIL APPLN. 838/2021**

Date of decision: 22nd March, 2021

IN THE MATTER OF:

DR SANDEEP MOURYA

..... Petitioner

Through

Mr. Mohit Mathur, Sr. Advocate with
Mr. Prakash, Advocate.

versus

STATE

..... Respondent

Through

Ms. Meenakshi Chauhan, APP for the
State
Ms. Zeenat Malick, Advocate for the
complainant.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

SUBRAMONIUM PRASAD, J.

1. This application filed under Section 438 Cr.P.C. is for grant of bail in the event of arrest of the petitioner in FIR No.44/2021 dated 28.01.2021 registered in Police Station Hauz Khas for offences punishable under Section 376 and 328 IPC.

2. The prosecutrix gave a complaint on 28.01.2021, stating as under:

a) Her father, late Mukesh Kumar, suffered heart attack on the night of 02.01.2019 and he was taken to the Safdarjung Hospital where the petitioner herein was the duty doctor. It is stated in the FIR that during the course of the treatment, the petitioner came to the residence of the prosecutrix and gave his profile for the purpose of marriage and asked for the profile of the prosecutrix.

b) It is stated that on 09.06.2020, the petitioner called the prosecutrix to come to Yusuf Sarai/Gautam Nagar so that they can get to know each other. She stated that she reached there at about 11 AM. It is stated that the petitioner told her that since she is interested in painting and sketching he will take her to his friend's flat. It is stated that the prosecutrix objected to come with him to the flat but the petitioner stated that his friend is also a doctor. She stated that when she reached the flat of Dr. Kisan she was given some cold drink after which she does not remember anything. It is stated that when she regained consciousness she was having pain in her stomach. It is stated that when she became alright she realised that she had been raped and when she confronted the petitioner she was threatened that a video had been taken by the petitioner and would be made viral.

c) It is stated that on 17.06.2020, the petitioner called the prosecutrix to a Hotel in Green Park, Yousuf Sarai, and again raped her.

d) It is stated that on 16.09.2020, again the prosecutrix was called to a Hotel where she was raped again. It is stated in the complaint that the prosecutrix has been threatened that the video which was taken would be made viral.

e) On her complaint FIR No.44/2021 dated 28.01.2021, was registered at Police Station Hauz Khas for offences punishable under Section 376 and 328 IPC.

3. The petitioner approached the Sessions Court by filing a bail application. A Status Report was filed by the Police repeating the contents of

the FIR. In the proceedings it was contended that the prosecutrix's father had suffered heart attack on 02.01.2019 and was brought to the hospital by the sister of the prosecutrix and during the said period, the sister of the prosecutrix was in constant touch with the petitioner. It is stated in the said order that the petitioner had requested the sister of the prosecutrix, who is a lab technician, to look for a job for his friend. The order records that in the month of May, 2020, the sister of the prosecutrix asked the petitioner as to whether he has married and then she requested the petitioner to find some eligible bachelor for her sister. The order records that the prosecutrix came to meet the petitioner and thereafter they established sexual relationship. The order also records that there were several instances of consensual sexual relationship and WhatsApp messages were exchanged. The bail application was rejected by an order dated 06.03.2021, on the ground that sexual relationship was established between the petitioner and the prosecutrix of the promise of marriage and therefore anticipatory bail could not be granted to the petitioner.

4. The petitioner has approached this Court by filing another application under Section 438 Cr.P.C. for grant of anticipatory bail. Notice was issued on 10.03.2021. Status report has been filed.

5. It is stated in the Status Report that during the course of the investigation material has been collected from the places where the petitioner and the prosecutrix have established sexual relationship. It has also been stated in the Status Report that the statement of the sister of the prosecutrix was recorded and it does not match with the statement of the prosecutrix. The Status Report records that on 10.03.2021 the petitioner has joined the investigation and has given his mobile phone to the investigating

team. The statement of the sister of the prosecutrix made under Section 161 Cr.P.C has also been filed.

6. Mr. Mohit Mathur, learned Senior Advocate appearing for the petitioner would state that the father of the prosecutrix was admitted on 02.01.2019. He states that the FIR was filed on the allegation that the petitioner took the prosecutrix to his friend's flat on 09.06.2019 where she was raped. He would state that this story has been completely given a go by and now the allegation is that the petitioner promised marriage and established physical relationship with her. Learned Senior Advocate would state that the petitioner has joined the investigation. The mobile phone in which the alleged video and pictures were taken is in the custody of the Police. It is stated that the statements of the prosecutrix and her sister does not match. He would also state that Dr. Kisan has not supported the version of the prosecutrix. He therefore states that no useful purpose would be served by arresting the petitioner.

7. On the other hand, Ms. Zeenat Malick, learned counsel appearing for the prosecutrix states that the petitioner is accused of a heinous offence. She would state that the petitioner has promised marriage to the prosecutrix and only because of the promise of marriage the physical relationship has been established between the prosecutrix and the petitioner. She would further state that the prosecutrix is getting obscene messages from unknown numbers and all this is happening at the instance of the petitioner.

8. Ms. Meenakshi Chauhan, learned APP appearing for the State also reiterates the averments made in the Status Report.

9. The material on record shows that though initially the prosecutrix came up with the case wherein she has alleged that the petitioner gave her a

drink laced with sedatives and taking advantage of the fact that she was not conscious the petitioner herein raped her. This allegation has been given a go by and the subsequent allegation of the prosecutrix is that sexual relationship was established on the basis of promise to marry. There are contradictions between the initial version and the present version of the prosecutrix. This Court has perused all the records and does not find any promise of marriage. There is no further material which has to be recovered from the petitioner. The sexual relationship was established on the promise of marriage or not is a matter of trial and has to be established during the trial.

10. The Supreme Court in Pramod Suryabhan Pawar v. State of Maharashtra, (2019) 9 SCC 608, observed as under:

“18. 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.

19. The allegations in the FIR indicate that in November 2009 the complainant initially refused to engage in sexual relations with the accused, but on the promise of marriage, he established sexual relations. However, the FIR includes a reference to several other allegations that are relevant for the present purpose.

They are as follows:

19.1. *The complainant and the appellant knew each other since 1998 and were intimate since 2004.*

19.2. *The complainant and the appellant met regularly, travelled great distances to meet each other, resided in each other's houses on multiple occasions, engaged in sexual intercourse regularly over a course of five years and on multiple occasions visited the hospital jointly to check whether the complainant was pregnant.*

19.3. *The appellant expressed his reservations about marrying the complainant on 31-1-2014. This led to arguments between them. Despite this, the appellant and the complainant continued to engage in sexual intercourse until March 2015.*

20. *The appellant is a Deputy Commandant in the CRPF while the complainant is an Assistant Commissioner of Sales Tax.*

21. *The allegations in the FIR do not on their face indicate that the promise by the appellant was false, or that the complainant engaged in sexual relations on the basis of this promise. There is no allegation in the FIR that when the appellant promised to marry the complainant, it was done in bad faith or with the intention to deceive her. The appellant's failure in 2016 to fulfil his promise made in 2008 cannot be construed to mean the promise itself was false. The allegations in the FIR indicate that the complainant was aware that there existed obstacles to marrying the appellant since 2008, and that she and the appellant continued to engage in sexual relations long after their getting married had become a disputed matter. Even*

thereafter, the complainant travelled to visit and reside with the appellant at his postings and allowed him to spend his weekends at her residence. The allegations in the FIR belie the case that she was deceived by the appellant's promise of marriage. Therefore, even if the facts set out in the complainant's statements are accepted in totality, no offence under Section 375 IPC has occurred."

11. The prosecutrix is a make-up artist and is a resident of Delhi. It cannot be said that she is a naive lady. This is not a case of forceful sexual assault. At this juncture, there is nothing on record which would indicate that the petitioner had promised marriage to the prosecutrix and therefore the consent given by the prosecutrix to have physical relationship was a free consent or not will be decided only in trial.

12. The petitioner is a Doctor working in Safdarjung Hospital and it cannot be said that he would be in a position to terrorise the prosecutrix or tamper with evidence. The evidence has been collected, the mobile phone of the petitioner is with the Police. In view the above, this Court finds it just and expedient to grant bail to the petitioner in the event of arrest in FIR No.44/2021 dated 28.01.2021 registered in Police Station Hauz Khas for offences punishable under Section 376 and 328 IPC on the following conditions:

- a) The petitioner shall furnish a personal bond in the sum of ₹50,000/- with one surety of the like amount who should be the relative of the petitioner to the satisfaction of the Trial Court.
- b) The petitioner is directed to give all his mobile numbers to the Investigating Officer and keep them operational at all times.
- c) The petitioner shall give his address to the IO and if he changes

the address he shall intimate the same to the IO.

- d) The petitioner shall report to the concerned Police Station on every Monday.
- e) The petitioner shall not tamper with evidence or exert pressure on the prosecutrix.

13. It is made clear and needless to state that the observations made in this order are only for the purpose of grant of bail and not on the merits of the case.

14. Accordingly, the bail application is disposed of along with the pending application(s), if any.

SUBRAMONIUM PRASAD, J.

MARCH 22, 2021

Rahul