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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on : 03rd August, 2021

Delivered on : 17th August, 2021

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BAIL APPLN. 2500/2021 and Crl.M.(Bail).No.939/2021

CDR. KALESH MOHANAN

..... Petitioner

Through : Ms.Geeta Luthra, Sr Advocate
with Ms.Shivani Luthra Lohiya,
Mr.Nitin Saluja, Ms.Asmita
Narula and Ms.Sasha Maria Paul,
Advocates.

versus

STATE

..... Respondent

Through : Mr.Sanjeev Sabharwal, APP with
WSI Urmila, PS Tilak Marg for
the State.

Mr.Krishan Kumar, and
Mr.Shivam Bedi, Advocates for
complainant.

Complainant in person.

CORAM:

HON'BLE MR. JUSTICE YOGESH KHANNA

YOGESH KHANNA, J. *(Though Video Conferencing)*

1. This petition is filed under Section 438 Criminal Procedure Code (hereinafter referred as *Cr P C*) for anticipatory bail to petitioner in case FIR No.100/2021 registered under Section 376/328/506 IPC at police station Tilak Marg against him on the complaint of the prosecutrix.

2. The allegations are the petitioner – an officer in Indian Navy - on the pretext of marriage had committed sexual intercourse with the

prosecutrix in the second week of December 2019 at Kota House, New Delhi. In December 2019, the petitioner took the prosecutrix to *Varuna Mess* where they had dinner. The petitioner gave cold drink mixed with sedatives to prosecutrix which she consumed and felt dizzy. She wanted to go to her home, but he took her to his Room No.55 at Kota House and gave her a tablet/medicine. After 10-15 minutes, she became unconscious and when she woke up next morning she realised she was raped. Being confronted, he told her he is in love with her. She left the room weeping. Next day he again called and tried to repeat the act, but she refused. Thereafter, they went for shopping for his mother etc.

3. It is alleged from December 2019 to January 2020 he has been calling the prosecutrix at Kota House, having physical relations on *promise of marriage*. After January 2020, he went to Kolkata for training with a promise to return after 2-3 months, but did not return, nor had any talks. She smelt of his bad intentions and hence on 27.03.2021 she reached Kannur, Kerala to meet him. She was adjusted by him in Guest House of Indian Naval Academy, Kerala. On 28.03.2021 she asked the petitioner to marry but he started shouting on her and said he did it only for fun. When the prosecutrix threatened to lodge a complaint, he told her he had her nude photographs and video recordings at Kota House and he shall upload the same on internet and shall ruin her career. Nevertheless, the prosecutrix met his mother on 29.03.2021 and requested her to intervene. The mother of the petitioner assured her to reason with her son. The prosecutrix returned to Delhi on 30.03.2021 but was under immense depression, trauma because of the misdeeds of the petitioner and allegedly his mother. On 15.06.2021, she came to know of his

marrying with another girl at Kerala with whom he had a love affair since long and even was engaged with her prior to March 2021. Later she saw his marriage photograph on his mobile display picture and immediately lodged the present complaint on 19.06.2021, which culminated into this FIR.

4. A bare perusal of the petition, however, reveal both were only friends and she was obsessed with the petitioner and wish to extract money from him as has always been saying she and her family are in financial hardship. The petitioner denied any physical relations with her. He alleged the prosecutrix could not have entered Varuna Mess, as is solely for Indian Navy officers. However, the petitioner admitted in January 2020 he travelled to Kolkata with a *lay-over* at Delhi on both ways as there was no direct flight from Kannur to Kolkata. He alleged around March – April 2020, the prosecutrix started calling and insisting him to marry her, but the petitioner did not echo her sentiment. Further, in September 2020 prosecutrix started communicating with him on the pretext of mutual interest in history but the petitioner's stand was he would not indulge in any relationship with her and was only interested in marrying a suitable girl from Kerala. He has also alleged she has been making repeated demands to transfer money to her bank account, but he showed his inability and then she came to Kerala in March 2021 unannounced on the pretext of an official work and intimated him upon her arrival at Kannur Airport. He got her adjusted in the Guest House of Indian Naval Academy, but did not engage in physical relations. She left Kannur, Kerala on 30.03.2021 and thereafter the petitioner did not speak to her on phone till from the date she left Indian Naval Academy.

Rather she was making calls to him instigating him to marry her, but he refused. On his refusal she became angry and started bombarding him with calls and messages. On 24.06.2021, the petitioner came to know about the registration of this FIR through newspaper; hence moved an application for bail before the learned Session's Court which was dismissed.

5. It is argued by the petitioner both of them are empowered person – she being an highly educated lady; both were on talking terms for the 1½ years from the date of first alleged incident; she never filed any FIR between December 2019 to January 2020; thus there is a considerable delay. Further, she being an educated lady knew as to what she was doing and the petitioner being an officer in Indian Navy has roots in the society, be granted anticipatory bail and he shall join the investigation as and when called for by the Investigating Officer of this case.

6. In support of her submissions, the learned senior counsel for the petitioner relied upon *Shiv Chander vs State of NCT of Delhi & Another* Bail Application No.254/2021 decided on 21.01.2021; *Rajesh Patel vs State of Jharkhand* (2013)3 SCC 791; *Jagdish Nautiyal vs State* Bail Application No.1317/2012 decided on 29.11.2012; and *Rohit Chauhan vs. State of NCT of Delhi* 2013 SCC Online Del 2106 to say there is much **delay** in lodging of the FIR hence petitioner is entitled to anticipatory bail; secondly she referred to *Arif Iqbal @Imran v. State* (2009) 164 DLT 157; *Madhav Krishna Vasave vs The State of Maharashtra* 2021 SCC Online Bom 833; *Dr.Sandeep Mourya v. State* Bail Application No.838/2021 decided on 22.03.2021; and *Prashant Bharti v. State (NCT*

of Delhi) (2013) 9 SCC 293 where giving of sedatives to prosecutrix did not find favour with the Courts and accused were granted anticipatory bail(s). She also referred to *Maj. Aunshuman Mahendra Jha v. The State of Maharashtra* Bail Application No.746/2020 decided on 14.08.2020 to say where the petitioner was serving in Army; his chance of fleeing from the court of justice were remote.

7. No doubt to the law propounded above, but *each case has to be dealt with on its own merits/facts*. If one looks at the facts, the delay need to be counted from 15.06.2021 and not from December, 2019. It starts from the day the prosecutrix found the petitioner had married elsewhere without informing her. The argument, the alleged sexual intercourse, even otherwise, was in December 2019 or January 2020 and hence for 1½ year she never filed any complaint and thus was privy to the act is not acceptable because the petitioner allegedly repeated the act even in March, 2021 at Kannur, Kerala without giving any indication to prosecutrix that he is marrying another girl. Rather, per allegations the prosecutrix on 15.06.2021 was shocked to hear about his marriage and she filed the complaint on 19.06.2021, hence it cannot be said there was much delay in lodging of the FIR. Per allegations, the petitioner assured her to marry but kept on delaying the matter and rather rebuked her saying he has being in physical relations only for fun. Nevertheless, the prosecutrix met his mother at Kerala, who allegedly assured her to look into the matter.

8. The status report filed by the police also records when the petitioner did not respond to her calls, she became suspicious and went to

Kerala in March, 2021 where he again sexually exploited / assured her of his promise to marry, but married another girl on 13.06.2021. He even *concealed* the fact of being engaged with another girl.

9. It is settled law the delay in lodging the FIR cannot be used as a ritualistic formula for doubting the prosecution case and discarding the same. If the delay is explained to the satisfaction of the Court, the prosecution case cannot be disbelieved, per *State of H.P. vs. Gian Chand* 2001 AIR SC 2075; and *Dildar Singh vs State of Punjab* (2006) 10 SCC 531.

10. Though, the petitioner stated he never contacted the prosecutrix after March, 2021, but she has filed her whatsapp chats and it appears till 18.05.2021 both were in contact with each other. The petitioner rather had called her number a times through voice call (Whatsapp) on her phone. The prosecutrix even filed the transcript of conversation dated 20.11.2020 between her; her friend and the mother of the petitioner to show the mother of the petitioner knew the petitioner had told her about prosecutrix and his intention to marry her. Thus, the defence taken by the petitioner they were only friends and he never made any promise to her or she was obsessed or she is here to extract money from him, appears to be factually incorrect. The allegation she is doing all this for money rather inflicts more pain to her injury. The investigation so far reveal he is trying to influence his subordinates and has destroyed / deleted the evidence against him.

11. No doubt, the victim is an educated lady, but is an educated person immune to cheating. The answer would be “no”. The facts do show the

petitioner and prosecutrix did have such relations to kindle a hope in the prosecutrix that the petitioner shall marry her at all costs. It was not illogical for her to think so. No doubt, the petitioner is a senior officer in Indian Navy, hence was required to show a more responsible behavior than the prosecutrix. Can he be allowed to play with her dignity on the pretext he cohabited with her just for fun and later claim she is extorting money from him. Such allegations if not backed with proof are rather insulting.

12. In *Harshvardhan Yadav vs State of UP* CrI. Appeal No.1382/2021 decided on 03.08.2021 by the High Court of judicature at Allahabad it was noted:-

30. Therefore, in the light of above discussion, it is necessary for the legislature to provide a clear and specific legal framework to deal with the cases where the accused obtained consent for sexual intercourse on the false promise of marriage. But till such law is enacted, the court should take into consideration the social reality and reality of human life and continue giving protection to such women who have suffered on account of false promise of marriage. Unless there is prolonged relationship which raises a strong inference of consensual sex, in other cases, particularly, in cases of single act of sexual intercourse as is the case in the present case, or relationship for a short time, persuaded by false promise of marriage or where circumstances show that the accused never intended to fulfill the promise or he could not be able to fulfill the promise on account of factors such as the accused was already married, he disclosed wrong identity, name, religion and other details to play deception to obtain consent for sexual intercourse, or the like. Obtaining consent for sexual relationship by false promise of marriage should be termed as consent given under misconception of fact and must amount to rape. The court cannot become a silent spectator and give license to those who are trying to exploit the innocent girls and have sexual intercourse with them on the pretext of a false promise of marriage. This feudal mind set and male 'chauhanism' that

women are nothing but an object of enjoyment is required to be rigorously addressed and strictly dealt with in order to create a healthier society and to increase a sense of security and protection in the mind of women. And, this is emphasized that this is the responsibility of all the democratic institutions in the country, more so because, all the women protective laws against all forms of sexual exploitation and abuse have been enacted to make the constitutional goal of gender justice a social reality.

13. In *Anurag Soni vs State of Chhattisgarh* CrI. Appeal No.629/2019 decided on 09.04.2019 the Supreme Court noted:-

10.4 In the case of *State of UP vs Naushad* (2013) 16 SCC 651, in the similar facts and circumstances of the case, this Court reversed the acquittal by the High Court and convicted the accused for the offence under Section 376 of the IPC. xxxx

19. In the present case, the accused had sexual intercourse with the prosecutrix by giving false assurance to the prosecutrix that he would marry her. After she got pregnant, he refused to do so. From this, it is evident that he never intended to marry her and procured her consent only for the reason of having sexual relations with her, which act of the accused falls squarely under the definition of rape as he had sexual intercourse with her consent which was consent obtained under a misconception of fact as defined under Section 90 IPC. Thus, the alleged consent said to have been obtained by the accused was not voluntary consent and this Court is of the view that the accused indulged in sexual intercourse with the prosecutrix by misconstruing to her his true intentions. It is apparent from the evidence that the accused only wanted to indulge in sexual intercourse with her and was under no intention of actually marrying the prosecutrix.

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13.(ii) That though the accused was to marry another girl – Priyanka Soni, the accused **continued to talk of marriage with the prosecutrix and continued to give the promise that he will marry the prosecutrix.**

14. In *Nikhil Parasar vs The State of GNCT of Delhi* Bail Application No.1745/2009 decided on 01.02.2010 this Court noted:-

8. The expression 'under a misconception of fact' is enough to include a case where the misrepresentation, made by the accused, leads to a misconception of fact in the mind of prosecutrix, who, believing the misrepresentation made to her and presuming, it to be true and correct, forms a misconception of fact that the accused was definitely going to marry her and acting thereupon, she consents to have sexual intercourse with him. As held by the Hon'ble Supreme Court in the case of Deelip (supra), a representation deliberately made by the accused, with a view to elicit the assent of the victim without having the intention or inclination to marry her, will vitiate the consent if it is established that at the very inception of the making of promise, the accused did not really entertain the intention of marrying her and the promise to marry was only a make belief held out only to obtain her consent for sexual intercourse.

15. Further it is alleged in para *I* of the status report the petitioner is a senior officer of Indian Navy and is rather *influencing* other officers of the Academy to manipulate the things causing destruction of evidence. It is alleged during investigation, notices were sent to the Commanding Officer, INS, Dara Shikoh Road on 23.06.2021 and 24.06.2021 and *it confirmed the petitioner was allotted accommodation at Naval Officers Mess, Kota House, New Delhi from 10.12.2019 to 14.12.2019.* Further, though it is alleged civilians are not allowed in Kota House, but the statement of the Guard has been *recorded* to show they do not make any entry in the visitors' register, if any officer is accompanying any private person/civilian. The same was done in this case too. The prosecutrix also alleges she accompanied the petitioner in a car, hence no entry was made in the visitors' register. It is also alleged the police made inquiry

regarding the accommodation allotted to the petitioner, but the reply of the authorities is *no record is held by this unit*. It shows the office of the petitioner is avoiding the reply under the *influence* of the petitioner. Further, on notice sent to the Commanding Officer, Naval Academy, Kannur, Kerala, to confirm if the prosecutrix stayed in the guest house in Indian Naval Academy from 27.03.2021 to 29.03.2021 as personal guest of the petitioner, they did not provide the attested copies of the record. Further the CCTV footage in both the units was stated to be *not available*.

16. It is alleged since the petitioner is trying to influence the replies from his department, hence his custodial interrogation is required to find out the place when and where he had taken the prosecutrix. The mobile phone of the petitioner is also required to be seized as it allegedly contain nude pictures and videos of the prosecutrix. I agree it can be handed over to the Investigating Officer, but a bare perusal of the order 07.07.2021 of the learned Session's Court would show he deleted the electronic record in the form of chats, text messages and facebook messages/chats exchanged between the parties. This act of the petitioner rather reflects his intention to cover up his wrongs by erasing the relevant electronic record/data, which would otherwise had given a true picture of the facts. It is also alleged petitioner has filed the selected documents to save his skin and has not filed the email in its entirety. Though it is argued the deleted data can be recovered from hard disk, but the details filed by the prosecutrix of her whatsapp, prima facie show he was in contact with her till 18.05.2021, but he argued otherwise.

17. Considering the facts and stage of investigation, I am not inclined to interfere with the order dated 07.07.2021 of the learned Session's Judge in declining anticipatory bail to the petitioner. The petition is dismissed. Pending application, if any, also stands disposed of.

18. Nothing opined above shall be treated as an observation on merits of case on either side.

YOGESH KHANNA, J.

AUGUST 17, 2021

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