



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

Date of decision: 17th January, 2022

IN THE MATTER OF:

+ **BAIL APPLN. 3543/2021**

PARVEEN KUMAR

..... Petitioner

Through Mr. Mahipal Singh, Advocate.

versus

THE STATE

..... Respondent

Through Ms. Meenakshi Dahiya, APP for the State with Inspector Fateh Singh and W/SI Nitesh Sharma, P.S. Fatehpur Beri.
Ms. Rakhi Dubey, Advocate for the prosecutrix along with prosecutrix in - person.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

SUBRAMONIUM PRASAD, J.

1. This is a petition under Section 439 of Cr.P.C. read with section 482 of Cr.P.C. for grant of bail in case FIR No.157/2021 which was filed under Sections 323, 363, 377, 420, 506 of IPC read with section 3 (1) (r), 3 (1) (w) (i), 3 (1) (w) (ii) and 3 (2) (v) of Schedule Caste and Schedule Tribe (Prevention of Atrocities) Act, 1989 registered at P.S. Fatehpur Beri.

2. The facts in the present case are as follows –

- i. The complainant is working in Central Industrial Security Force (*hereinafter* “CISF”) as a constable. The Prosecutrix filed a complaint on 30.03.2021 to the Deputy Director CISF (U), New



Delhi against Parveen Kumar (petitioner herein) who is also a constable in CISF stating that their relationship began on 31.12.2018 and lasted for 4 years. It is stated in the complaint that the petitioner herein promised to marry the prosecutrix and raped her on several occasions from mid-2019 till February 2021.

- ii. It is stated that in March 2019, the petitioner took the complainant's ATM card and withdrew money from her account whenever he wanted. It is further stated that the complainant even took a loan of Rs. 1, 25, 000/- for the petitioner's needs. Further, it is stated that the petitioner had taken around Rs. 5-6 lakhs from the complainant in the form of cash and bank transactions.
- iii. It is stated that on 12.06.2020, the petitioner was under the influence of alcohol and made physical relations with the complainant thereafter she bled heavily from the vagina and the petitioner took the complainant to the Madan Mohan Hospital where the treatment could not take place. The complainant was then taken to Akash Hospital where she was treated. It is further stated that the petitioner threatened the complainant that if she told anyone about this, he might lose his job and she would face dire consequences.
- iv. It is stated that the complainant made it clear to the petitioner well in advance that the complainant belongs to a Scheduled Tribe and that there will be no future of their relationship, to which the petitioner persuaded that he would convince his parents and that the things will work out. The petitioner assured her that their



belonging to different castes would not be a hindrance to their marriage.

- v. It is stated that on 03.12.2020 the couple solemnized their marriage at Prachhin Hanuman Mandir, Delhi and following this the couple started living in Arjun Garh for 14 days where after the petitioner went to his battalion in Ranchi. It is stated that the complainant's family visited the family of the petitioner where they got to know that the family of petitioner did not agree for the marriage since inception and that the petitioner was engaged to some other girl and thereafter the petitioner stopped picking and replying to the complainant's phone calls and messages respectively.
- vi. It is stated that the petitioner used to beat her and make forceful physical relations with her and also used to make caste based derogatory abuses/remarks.
- vii. It is also stated that the petitioner made the complainant shift her house to a rented accommodation in Aya Nagar, New Delhi where they started living together.
- viii. Consequent to the FIR, a second complaint dated 13.06.2021 was filed at PS Fatehpur Beri in which the complainant stated that she belonged to a Scheduled Tribe category and the petitioner usually uttered and made caste specific derogatory remarks. It was further stated that the petitioner started pressurising and threatening the complainant to retract her complaint and the FIR. It is further stated that one D.R. Meenu working in Delhi Police as



a Sub-Inspector who is the friend of the petitioner was trying to settle this matter by exerting pressure on the complainant.

3. The chargesheet stands filed. It is stated in the chargesheet that during investigation it was found that the petitioner lured the complainant and forced himself on the complainant on 12.06.2020 and then threatened the complainant not to lodge a complaint. This happened without the consent of the complainant. It is further stated that the complainant took a loan of Rs. 12 Lacs for the petitioner to buy Hyundai Accent car.

4. The prosecutrix's statement under section 164 Cr.P.C. reveals that the petitioner used to withdraw money her account without her permission and that on 12.06.2020 the petitioner demanded Rs. 60,000 from the complainant and upon refusing the same he forcibly made physical relations with her. It is further stated that he promised to marry her and asked her not to lodge a complaint about the intercourse as it would affect his career. It is also stated that the petitioner use to visit the complainant and make physical relations and ask for money assuring to marry her. It is further stated that the petitioner bought laptop, clothes from the complainant's salary account. In December, 2020 the petitioner asked the complainant to shift to a rented accommodation in Aya Nagar with him and he would marry her there. It is further stated that, the petitioner made last physical relation with the complainant in February, 2021 and promised to marry her after coming back from his posting in Ranchi in March, 2021. It was further stated that the petitioner called the complainant a prostitute which caused her physical and mental agony. It was stated that in March, 2021 the petitioner told the complainant's family that the petitioner could not marry the complainant due to them belonging to different castes. It is also stated that the complainant



gave money to the petitioner on different dates thorough her bank account as well as cash withdrawn from the ATM machine and the same data has been collected which was verified form the SBI Bank Jonapur Branch, New Delhi. On 03.06.2021 an application for anticipatory bail was moved by the petitioner Parveen Kumar before the learned Additional District & Sessions Judge, Saket Courts where the learned Additional Sessions Judge granted him interim bail and directed the petitioner to join investigation as and when required by the investigating officer.

5. On 28.07.2021 first bail application was filed before the learned Additional Sessions Judge, Saket Courts wherein it was dismissed on the grounds that there are specific allegations of physical abuse and casteist remarks against the prosecutrix. It was further stated that the allegations against the petitioner are grave in nature and the investigation is still going on.

6. The petitioner was arrested on 08.07.2021. On 09.09.2021, the second bail application was filed before the learned Additional Sessions Judge, Saket Courts. The application was dismissed on the ground that the investigation was at an initial stage and that there are specific allegations of physical abuse and casteist remarks against the prosecutrix. It was further stated that the allegations against the petitioner are grave in nature. It is also stated that there is no material change in the circumstances and the petitioner should not be granted bail.

7. Mr. Mahipal Singh, learned counsel for the petitioner stated that the petitioner is in custody from 08.07.2021. He further argued that the trial court failed to consider that the incident allegedly occurred on 12.06.2020 and, thereafter, both the parties started living together in a rented



accommodation in Aya Nagar, New Delhi. It was further contended that the couple was in a live-in relationship at the said rented accommodation. The learned counsel for the petitioner further stated that there was no false promise of marriage as they were in a live-in relationship.

8. Learned counsel for the petitioner stated that the petitioner is willing to marry the complainant but the complainant is refusing to marry him. He further stated that the learned Trial Court failed to appreciate that the alleged story given by the prosecutrix that is the petitioner was avoiding her calls and messages is true as the petitioner made a false statement of being employed in Air Force and he did not want to meet her but the prosecutrix went Bangalore to meet him.

9. Learned counsel for the petitioner stated that the trial would take a long time and keeping the petitioner in custody would not serve any purpose as the petitioner is the sole bread-earner of the family. It is argued that the petitioner has clean antecedents.

10. The learned counsel for the petitioner places reliance on a judgment passed by this Court, in Rohit Chauhan v. State of NCT of Delhi, **2013 (200) DLT 380** and contends that the petitioner and the complainant made physical relations with each other out of their own free will. He stated that many of such cases are being reported by woman when the relationship turns sour.

11. The learned counsel for the petitioner also places reliance on a judgment passed by the Supreme Court in Deepak Gulati v. State of Haryana, **(2013) 7 SCC 677** wherein it was held that there may of course be circumstances when a person having best of intentions to marry is unable to marry the victim owing to various unavoidable circumstances. The failure to



keep a promise due to any uncertain reason does not always amount to misconception of facts and a case of rape is not made out.

12. The learned counsel for the petitioner argued that complainant is an educated lady and she also gave consent for a physical relationship with the petitioner and this does not fall into a category of misconception or fraud except when the prosecutrix is an illiterate woman and she has been clouded by a man hiding his identity or when a man is already married to another woman, only then there is misconception or fraud.

13. The learned counsel for the petitioner also states that the chargesheet stands filed. The petitioner and his family are residents of Rajasthan and have deep roots in society. He stated that there is no question of fleeing from justice or absconding.

14. The learned counsel for the petitioner prayed that the petitioner may be granted regular bail in FIR No. 157/2021 dated 15.04.2021 registered at Police Station Fatehpur Beri for offences under Section 376, 506 IPC.

15. Ms. Meenakshi Dahiya, learned APP vehemently opposes the present bail application and she states that the bank statements of the complainant and petitioner have been collected wherein it was found that the complainant transferred money into the bank account of the petitioner and that he was using the ATM card of the complainant and the recovery of the same is required.

16. Ms. Meenakshi Dahiya, learned APP also stated that the complainant had to take a loan of Rs.12, 00, 000/- which was forced by the petitioner to buy a Hyundai Accent car. She further stated that the petitioner had the possession of the petitioner's ATM card.



17. Ms. Meenakshi Dahiya, learned APP further stated that the petitioner got engaged to another girl. She further stated that the complainant had forceful intercourse which resulted in bleeding and medical help was sought.

18. Ms. Meenakshi Dahiya, learned APP stated that the petitioner used casteist remarks against the prosecutrix. She stated that if released on bail, the petitioner will threaten the prosecutrix.

19. Ms. Rakhi Dubey, learned counsel for the complainant, states that this is a case where the petitioner was exploited the prosecutrix physically, mentally and emotionally. She states that the petitioner had won the trust of the prosecutrix on the promise to marry her. She states that the petitioner has been constantly taking money from the prosecutrix and for that the prosecutrix had to take a loan and now she is clearing the loan after the petitioner deserted her. She states that the petitioner does not deserve any indulgence and cannot be granted bail looking into the seriousness of the offence.

20. Heard Mr. Mahipal Singh, learned counsel for the petitioner, Ms Meenakshi Dahiya, learned APP for the State, Ms. Rakhi Dubey, learned counsel for the complainant and perused the material on record.

21. The parameters to be considered for grant of bail have been consistently enunciated by the Apex Court. The parameters laid down by the Apex Court are:

- a) nature and gravity of the charge;
- b) severity of the punishment in case of conviction;
- c) reasonable apprehension of witness being influenced;
- d) prima facie or reasonable ground to believe that the accused had committed the offence;



- e) character, behaviour, means, position and standing of the accused;
- f) danger of justice being thwarted by grant of bail.

(Refer Ram Govind Upadhyay vs. Sudarshan Singh and Others, (2002) 3 SCC 598 and Prasanta Kumar Sarkar vs. Ashis Chatterjee and Another, (2010) 14 SCC 496)

22. The petitioner and the prosecutrix are working in CISF as constables. It is, therefore, cannot be said that the petitioner is in such a position that he can threaten the prosecutrix. The allegation against the petitioner is that the petitioner established physical relationship with the prosecutrix after promising to marry her. The relationship which has been established between the petitioner and the prosecutrix is, therefore, consensual and a question as to whether the consent was given under misconception or not, would be seen in the trial. It is well settled that there is a distinction between a false promise given on the understanding by the maker that it will be broken and a breach of promise which is made in good faith but subsequently not fulfilled (refer Anurag Soni vs. State of Chhattisgarh, (2019) 13 SCC 1).

23. The Supreme Court in Pramod Suryabhan Pawar vs. State of Maharashtra and Another, (2019) 9 SCC 608 has observed as under:

"16. 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.”

24. In Pramod Suryabhan Pawar vs. State of Maharashtra and Another (supra), the Supreme Court has 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."

25. In Deepak Gulati [Deepak Gulati v. State of Haryana, (2013) 7 SCC 675], the Supreme Court observed as under:

“21. ... There is a distinction between the mere breach of a promise, and not fulfilling a false promise. Thus, the court must examine whether there was made, at an early stage a false promise of marriage by the accused; and whether the consent involved was given after wholly understanding the nature and consequences of sexual indulgence. There may be a case where the prosecutrix agrees to have sexual intercourse on account of her love and passion for the accused, and not solely on account of misrepresentation made to her by the accused, or where an accused on account of circumstances which he could not have foreseen, or which were beyond his control, was unable to marry her, despite having every intention to do so. Such cases must be treated differently.



24. Hence, it is evident that there must be adequate evidence to show that at the relevant time i.e. at the initial stage itself, the accused had no intention whatsoever, of keeping his promise to marry the victim. There may, of course, be circumstances, when a person having the best of intentions is unable to marry the victim owing to various unavoidable circumstances. The “failure to keep a promise made with respect to a future uncertain date, due to reasons that are not very clear from the evidence available, does not always amount to misconception of fact. In order to come within the meaning of the term “misconception of fact”, the fact must have an immediate relevance”. Section 90 IPC cannot be called into aid in such a situation, to pardon the act of a girl in entirety, and fasten criminal liability on the other, unless the court is assured of the fact that from the very beginning, the accused had never really intended to marry her.

26. As per the statement of the prosecutrix, physical relationship was established between the petitioner and the prosecutrix on the basis of promise to marry. Whether the relationship was established with the prosecutrix after promising marriage or there was no promise to marry at all or whether there was any consent initiated by misconception or concealment of fact arising out of a promise to marry has to be established. It has to be ascertained on facts that the promise to marry must have been a false promise given in bad faith with no intention of being adhered to at the time of making promise.

27. The chargesheet has been filed. As stated earlier, both the petitioner and the prosecutrix are constables in CISF. The petitioner has roots in the society and, therefore, it cannot be said that the petitioner would flee from justice. The social status of the petitioner vis-a-vis, the prosecutrix are similar and it cannot be said that the social status of the petitioner is such



which would give a reasonable apprehension in the mind of the Court that the petitioner would be in a position to influence the prosecutrix or any other witnesses. The evidence is with the prosecution. Similarly, for the offence under SC/ST Act, it has to be established that the ingredients of the offence under Section 3 (1) (r), 3 (1) (w) (i), 3 (1) (w) (ii) and 3 (2) (v) of Schedule Caste and Schedule Tribe (Prevention of Atrocities) Act, 1989 are made out in the facts and circumstances of this case. The petitioner has been in custody since 08.07.2021 and this Court finds that no useful purpose would be served in keeping the petitioner further in custody. This Court, therefore, is inclined to grant bail to the petitioner on the following conditions:

- a) The petitioner shall furnish a personal bond in the sum of Rs.50,000/- with two sureties, one of them should be the relative of the petitioner, in the like amount to the satisfaction of the Trial Court;
- b) The Memo of Parties shows that the petitioner is residing at Village Lakim Pur, P.S. Behrod District Alwar, Rajasthan. The petitioner is directed to report to the local police station once in every week. In case, the petitioner is reinstated back in service then he is directed to report to the local police station once in every week wherever he is posted;
- c) The petitioner is directed to give all his mobile numbers to the Investigating Officer and keep them operational at all times;
- d) The petitioner shall not, directly or indirectly, tamper with evidence or try to influence the witnesses in any manner;
- e) The petitioner shall attend all the Court proceedings.



e) In case it is established that the petitioner has tried to influence the witnesses or tamper with the evidence, the bail granted to the petitioner shall stand cancelled forthwith.

28. The CISF is requested to ensure that the petitioner is not to be posted at the same place where the prosecutrix has been posted.

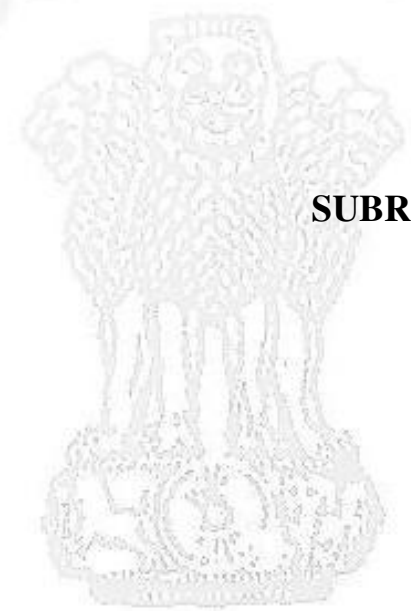
29. The petition is disposed of along with all the pending application(s), if any.

30. Be it noted that this Court has not made any observations on the merits of the case.

SUBRAMONIUM PRASAD, J

JANUARY 17, 2022

S. Zakir



न्यायमेव जयते