



CrI.O.P.No.12926 of 2023

CrI.O.P.No.12926 of 2023

WEB COPY

C.V.KARTHIKEYAN, J.

The petitioner who apprehends arrest at the hands of the respondent police for the offences punishable under Sections 417, 420 and 376 of IPC in Crime No.3 of 2023, seeks anticipatory bail.

2. The case of the prosecution is that the petitioner and the defacto complainant had a relationship and also had sexual intercourse on several occasions on the promise of the petitioner and his mother to marry her. It is the case of the defacto complainant, that on several times, she had been ravished on the promise given by the petitioner herein to marry her. It is also contended that she had taken care of the petitioner when he was suffering from leg fracture. But, despite such love and affection from her side, on the wrong advise of his parents, the petitioner did not keep up his promise to marry her. She also alleged that she



CrI.O.P.No.12926 of 2023

had several intimate photographs and that she spent an amount of Rs.30,000/- for taking care of the petitioner. Further, she had also become pregnant. The pregnancy was aborted under the compulsion of the petitioner herein. After the said incident, the petitioner had gone back on his promise to marry her and threatened her stating that he would complain alleging immoral conduct. The learned counsel, during the course of submissions before this Court, characterized her as a person of "loose morals".

3. The learned counsel for the petitioner stated that the petitioner had submitted materials to establish this allegation and also placed them as documents. The learned counsel for the petitioner stated that the defacto complainant had stayed in a hotel with another individual. It was stated that the First Information Report had been registered not only against the petitioner herein but also against his mother. A learned Single Judge of this Court had granted Anticipatory Bail to the mother by an order dated



CrI.O.P.No.12926 of 2023

WEB COPY

15.05.2023 in CrI.OP.No.8169 of 2023. In fact, this is the second petition seeking Anticipatory Bail filed by the petitioner herein. The earlier application was dismissed as withdrawn by the petitioner herein. Therefore, he prays grant of anticipatory bail to the petitioner.

4. The learned Government Advocate (CrI. Side) would submit that the petitioners have wrongly alleged that the defacto complainant is a person of immoral character. The petitioner refused to marry her on the ground that the defacto complainant belongs to a different caste. If this Court granted Anticipatory Bail to the petitioner, he will threaten the defacto complainant. He vehemently opposed grant of anticipatory bail to the petitioner.

5. The learned counsel for the petitioner relied on a judgement of the Hon'ble Supreme Court reported in **(2019) 9 SCC 608, Pramod Suryabhan Pawar Vs State of Maharashtra and**



another and specifically relied on paragraph Nos.16, 17, 18 which are as follows:

"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. In Deepak Gulati this Court observed: (SCC PP.682-84, paras 21 & 24)

"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.



WEB COPY



CrI.O.P.No.12926 of 2023

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."

17. In *Uday V. State of Karnataka* the complainant was a college-going student when the accused promised to marry her. In the complainant's statement, she admitted that she was aware that there would be significant opposition from both the complainant's and accused's families to the proposed marriage. She engaged in sexual intercourse with the accused but nonetheless kept the relationship secret from her family. The Court observed that in these circumstances the accused's promise to marry the complainant was not of immediate relevance to the complainant's decision to engage in sexual intercourse with the accused, which was motivated by other factors.

"25. There is yet another difficulty which faces the prosecution in this case. In a



WEB COPY



CrI.O.P.No.12926 of 2023

case of this nature two conditions must be fulfilled for the application of Section 90 IPC. Firstly, it must be shown that the consent was given under a misconception of fact. Secondly, it must be proved that the person who obtained the consent knew, or had reason to believe that the consent was given in consequence of such misconception. We have serious doubts that the promise to marry induces the prosecutrix to consent to having sexual intercourse with the appellant was difficult on account of caste considerations. The proposal was bound to meet with stiff opposition from members of both families. There was therefore a distinct possibility, of which she was clearly conscious, that the marriage may not take place at all despite the promise of the appellant. The question still remains whether even if it were so, the appellant knew, or had reason to believe, that the prosecutrix had consented to having sexual intercourse with him only as a consequence of her belief, based on his promise, that they will get married in due course. There is hardly any evidence to prove this fact. On the contrary, the circumstances of the case tend to support the conclusion that the appellant had reason to believe that the consent given by the prosecutrix was the result of their deep love for each other. It is not disputed that they were deeply in love. They met often, and it does appear that the prosecutrix permitted him liberties which, if at all, are permitted only to a person with whom one is in deep love. It is also not without significance that the prosecutrix



WEB COPY



CrI.O.P.No.12926 of 2023

stealthily went out with the appellant to a lonely place at 12 o'clock in the night. It usually happens in such cases, when two young persons are madly in love, that they promise to each other several times that come what may, they will get married."

(emphasis supplied)

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."

6. The learned counsel stated that this Court should abide by to the dictum laid down by the Hon'ble Supreme Court. However, he did not put forth any argument on the similarities of facts.

7. It is to be pointed out that every case, particularly every offence will have to be examined with respect to the



CrI.O.P.No.12926 of 2023

peculiar circumstances of that particular offence. In the instant case, the defacto complainant had very specifically stated that she had been lured with promise of marriage and had taken care of the petitioner when he had suffered a fracture in his leg, spent money on him and also had sexual intercourse leading to pregnancy which had to be aborted. It is her allegation that the petitioner fell back on his promise and stated to characterize her as a woman of loose morals and actually doubted whether he was responsible for such pregnancy. I hold that no woman can be ravished for the lust of a man, crumpled, used, sexually exploited and then castigated and cast away. The dignity of every woman has to be protected by every Court. They cannot be treated as objects of lust and play. The petitioner cannot claim innocence of his acts and seek indulgence of this Court.

8. The petitioner had admitted that he had sexual intercourses on sexual occasion with the defacto complainant and



CrI.O.P.No.12926 of 2023

had then cast her away as unwanted rubbish. There has been a promise by both of them to continue the relationship. I hold that alleging that the defacto complainant is a woman of loose morals and the allegations relating to the character of the defacto complainant are to put it mildly, an example of saddist male power and sense of superiority. The petitioner cannot hide his act of forcing himself on the defacto complainant. He now puts the blame on the defacto complainant and has sunk to the level of villifying her character. The facts in this case are distinguishable. At this stage, a *prima facie* opinion can certainly be drawn that there was a strong possibility of promise to marry and of sexual exploitation. Proof of the same has to be examined only on analysing evidence.

9. The learned counsel for the petitioner also placed reliance on yet another judgment of the Hon'ble Supreme Court in *CrI.A.No.1231 of 2022, Shambhu Kharwar Vs. State of Uttar*



CrI.O.P.No.12926 of 2023

Pradesh and another. He did not however point out the relevant portion of the said judgment, but stated that the judgment referred supra, reported in (2019)9 SCC 608, *Pramod Suryabhan Pawar Vs. State of Maharastra and another* had been relied in this judgment of the Hon'ble Supreme Court.

10. In *Pramod Suryabhan Pawar Vs. State of Maharastra and another* (referred supra), a complaint was given that the defacto complainant and the appellant before the Hon'ble Supreme Court had known each other from 1998 and would speak regularly. They had proposed to marry in 2008 though they belonged to different castes. The appellant had allegedly promised to marry her after the marriage of his elder sister. e reiterated the promise in a temple on 23.01.2009. Thereafter, it was stated that she refused to submit herself for sexual intercourse. He forcibly established a relationship. His sister got married on 05.02.2012. Thereafter, she visited him and raised a



CrI.O.P.No.12926 of 2023

WEB COPY

concern about marriage. He refused on the ground that she belonged to a different caste.

11. It was under those circumstances, the complaint was given. Even in that particular case, the defacto complainant had been again to the hospital multiple times to check whether she was pregnant. The relationship then continued. The petitioner had filed an application seeking Anticipatory Bail and it was granted. Thereafter, he had filed an application to quash the F.I.R. That was refused by the High Court and the matter came up to the Supreme Court under Section 482 of the Cr.P.C seeking to quash the F.I.R. The inherent power under Section 482 of the Cr.P.C was examined by the Hon'ble Supreme Court. It was under those circumstances that the issue of breach of promise was examined by the Hon'ble Supreme Court.

12. In the instant case, it is clear that the petitioner herein



CrI.O.P.No.12926 of 2023

WEB COPY

had viewed the defacto complainant as an object of lust, ravished her, incidently promised to marry her, ravished her again, forced an abortion and then threw her away and for good measure assailed her character. I hold the Court has a duty to protect the dignity of a woman. The petitioner's conduct stands exposed. I hold that, the acts of the petitioner certainly attracts the offences under which the F.I.R had been registered.

13. I am not inclined to grant Anticipatory Bail. The Criminal Original Petition stands dismissed. There shall be a direction to the Additional Public Prosecutor to instruct the investigating officer to take the petitioner into custody forthwith.

03.10.2023

rna/apd



WEB COPY



CrI.O.P.No.12926 of 2023

C.V.KARTHIKEYAN, J.

rna/apd

CrI.O.P.No.12926 of 2023

03.10.2023