



Crl.O.P.No.16622 of 2023

WEB COPY

Orders Reserved on
10.08.2023

Orders Pronounced on
21.08.2023

Crl.O.P.No.16622 of 2023

RMT.TEEKAA RAMAN,J.,

The petitioner, who apprehends arrest at the hands of the respondent/ police for the offences punishable under Sections 417, 354 and 506(ii) of IPC in Crime No.10 of 2023, seeks anticipatory bail.

2. The case of the prosecution is that the de-facto complainant studied in R.M.D Engineering College in 2016-2020 batch and had acquaintance with the petitioner/accused through Instagram who was a senior in the same college. They had friendship for 4 years and had love affair about 1 year. While so, the petitioner/accused took the de-facto complainant to his house and had sexual relationship on the pretext that both are going to get marry. It happened many times from November. On 18.02.2023, with the consent of both family, the petitioner along with his family member, visited the de-facto complainant's house ceremoniously for marriage talks. In the meanwhile, the de-facto complainant became pregnant and again visited the de-facto complainant's house on 14.04.2023. After talks, fixing the marriage Hall, both family went to ECR Sheltor Resort, but the petitioner's family had not treated the de-facto complainant properly and



Crl.O.P.No.16622 of 2023

asked the de-facto complainant to wear jewels on her full body. Therefore, the de-facto complainant insisted for Register marriage, but the petitioner did not agree.

3. The de-facto complainant gave a complaint on 17.05.2023, vide CSR No.98/2023 and in the enquiry, the petitioner and his father gave an undertaking to conduct marriage. On 24.05.2023, the petitioner's father compelled the de-facto complainant to take a scan and as such, all visited Bharat Scan, Royapettah on 28.05.2023. Scan Report revealed that the child in womb has no heart beat.

4.It is further alleged that, the petitioner had sexual relationship with the de-facto complainant promising to marry and thereafter refused to marry and necessary action has to be taken against the petitioner. Hence the complaint.

5. The learned Senior counsel for the petitioner submitted that the alleged sexual relationship happened many times from November 2022 onwards and the sexual intercourse relationship between the de-facto complainant and the sole accused was with consent and not on compulsion. He further contended that the marriage was called off by the de-facto complainant by herself only, through the whatsapp on 18.04.2023 and in support thereto, prints out have been obtained and placed. The de-facto



Crl.O.P.No.16622 of 2023

complainant's mother tried to abort the child and these facts are admitted by the de-facto complainant herself in her phone on April 2023.

6(a). Mr.S.Prabakaran, learned Senior counsel appearing for the petitioner contended that there was a lover affair between the parties and they had sexual affairs since November 2022, on multiple times. She had been conceived and by consent of both the family members, they met at a private resort in ECR road and marriage date has been fixed. Advance amount for marriage hall for conducting the marriage and reception had also been paid by the accused herein. However it is the de-facto complainant who has called off the wedding on April 2023 and the unilaterally, she choose to abort the child and now they turned around and filed a false case. Hence, he prayed for grant of anticipatory bail to the petitioner.

(b) The learned Senior Counsel has further submitted that after both the family met in a private resort in E.C.R road date of marriage has been finalized. Consequent thereto, marriage hall has also been fixed regarding the performance of marriage. The boy's mother has represented that the girl has to come in a traditional dress i.e., silk saree for which the victim girl disagreed that it should be in a form of self-respect form and mere registration and she is not willing to wear traditional saree and exonerated the said wish of the petitioner accused mother and gave a false complaint



Crl.O.P.No.16622 of 2023

and according to the counsel this is the triggering point for the discard between the two families.

7. The learned counsel for the intervenor (victim) contended that the physical relationship between the parties was on the promise to marry.

8. The learned Government Advocate (Crl.Side) appearing for the respondent-police submitted that the complaint was taken by W.C.17 All Women Police Station and considering the nature of this case, it was treated in C.S.R.No.98 of 2023 on 17.05.2023 and as per the F.I.R, both the parties have consent for conducting marriage, however the accused refused to marry.

9. The learned Senior counsel appearing for the petitioner has relied upon the judgment of the Apex Court reported in (i) (2019) 9 SCC 608. [Pramod Suryabhan Pawar Vs.State of Maharashtra and another] wherein, the Apex Court has held as follows:-

"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



Crl.O.P.No.16622 of 2023

WEB COPY

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."

(ii) In the judgment of the Apex Court reported in Crl.A.No.233 of 2021, dated 01.03.2021 [Sonu Vs.State of Uttar Pradesh and Ors] wherein, the Apex Court has held as follows:-

..... 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.[10]

10. After hearing all the parties concerned and on perusal of the averments made in the complaint and also documents filed in the typed set of papers which contains the Instagram conversation between the sole accused and the de-facto complainant and whatsapp message between the parties, I find from the de-facto complainant whatsapp to accused on 18.04.2023 at about 22.11 hours, she has called off the marriage through the whatsapp and Instagram.



Crl.O.P.No.16622 of 2023

WEB COPY

11. As stated supra in the typed set of papers, the de-facto complainant filed documents to show that they made arrangements for conducting the marriage and booked the marriage hall and reception hall at Chennai.

12. As per the uncontroverted allegations in the complaint and F.I.R, it goes to show that the de-facto complainant and the accused had friendship for 4 years and love affair for about 1 year and on 18.02.2023, both the family members have given consent for marriage and both the family members had joint dinner at the private hotel in ECR resort road on 14.04.2023.

13. According to the complaint, since the scan report revealed that the child has no heart beat and hence it was aborted. However, on the side of the sole accused, it is refuted as unilateral decision.

14. On the above factual matrix, I find that between the de-facto complainant (lady) and the accused (men) initially there was a friendship, which later developed into love affair and subsequently both the indulged in physical relationship before the marriage, she became pregnant. Family members have consented for marriage during February 2023 and she became pregnant.



Crl.O.P.No.16622 of 2023

WEB COPY

15. As narrated above, date and marriage hall for marriage has been fixed and the child in womb was aborted. As per the complaint, it is without heart beat and hence aborted and as per the accused, since the De-facto complainant(lady) has unilaterally called off the marriage so she has aborted the child in womb unilaterally.

16. On the above background of the facts and circumstances, I am inclined to grant the relief to the petitioner and he is to co-operate for medical examination.

17.Considering the above facts and circumstances of the case, the submissions made by the learned counsel on either side, this Court is inclined to grant anticipatory bail to the petitioner with certain conditions.

18.Accordingly, the petitioner is ordered to be released on bail in the event of arrest or on his appearance, within a period of fifteen days from the date on which the order copy made ready, before the learned Chief Metropolitan Magistrate, Egmore, Chennai, on condition that the petitioner shall execute his own bond for a sum of Rs.10,000/- (Rupees Ten Thousand only) with two sureties to the satisfaction of the respondent Police or the Police Officer, who intends to arrest or to the satisfaction of the learned Magistrate concerned, failing which, the petition for anticipatory bail shall stand dismissed and on further condition that:



Crl.O.P.No.16622 of 2023

[a]the petitioner and the sureties shall affix their photographs and Left Thumb Impression in the surety bond and the Magistrate may obtain a copy of their Aadhar card or Bank pass Book to ensure their identity.

[b] the petitioner shall report before the respondent- Police everyday at 10.30 a.m., until further orders.

[c] the petitioner shall not tamper with evidence or witness either during investigation or trial;

[d] the petitioner shall not abscond either during investigation or trial;

[e] On breach of any of the aforesaid conditions, the learned Magistrate/Trial Court is entitled to take appropriate action against the petitioner in accordance with law as if the conditions have been imposed and the petitioner was released on bail by the learned Magistrate/Trial Court himself, as laid down by the Hon'ble Supreme Court in **P.K.Shaji vs. State of Kerala [(2005)AIR SCW 5560]**;

[f] If the accused thereafter absconds, a fresh FIR can be registered under Section 229A IPC;

21.08.2023

nvi



WEB COPY



Crl.O.P.No.16622 of 2023

RMT.TEEKAA RAMAN,J.,

nvi

order in
Crl.O.P.No.16622 of 2023

21.08.2023