

THE HONOURABLE DR. JUSTICE D.NAGARJUN

CRIMINAL PETITION No.55 of 2023

ORDER:

This Criminal Petition is filed by the petitioner/accused under Sections 438 of the Code of Criminal Procedure seeking pre-arrest bail in FIR No.983 of 2022 dated 22.12.2022 on the file of the Ramachandrapuram Police Station, Cyberabad, for the offences punishable under Sections 417, 420, 493, 376 of the Indian Penal Code.

02. Heard Sri P. Nagendra Reddy, learned counsel for the petitioner as well as Sri T.V.Ramana Rao, learned Additional Public Prosecutor for the respondent/State.

03. The facts in brief as per the complaint dated 22.12.2022 are that, the petitioner who is distant relative to the victim has secured the mobile number of the victim from her relatives and started chatting with her and ultimately made her to believe that he would marry her. As the petitioner has promised to marry the victim, she gave her consent to have sexual intercourse with him. Later, he has informed that his mother is not accepting the proposal of

marrying her and that his parents are searching for good marriage for him. On 07.12.2022, he informed the victim that his marriage was settled with other girl. On a complaint filed by the *de facto* complainant, a case in crime No.983 of 2022 has been registered.

04. Learned counsel for the petitioner has submits that the victim is an adult and she has given consent and thereby consent of sex between adults is not an offence. It is also submitted that even if, on the promise given by the petitioner that he would marry her, the said consent is a free consent and thereby the offence under Sections 376 or 420 IPC are not applicable.

05. Learned Additional Public Prosecutor submits that the petitioner only with an intention to have sex with the *de facto* complainant had made false promise and subsequently had refused to marry her, therefore, the consent given is not a free consent and thereby the offence under Section 376 or 420 IPC are applicable.

06. Heard both sides and perused the record.

07. Learned counsel for the petitioner relied upon an authority of the Hon'ble Supreme Court in **SONU ALIAS SUBHASH KUMAR v. STATE OF UTTAR PRADESH AND ANOTHER**¹ wherein at para 11 is held as under:

11. Bearing in mind the tests which have been enunciated in the above decision, we are of the view that even assuming that all the allegations in the FIR are correct for the purposes of considering the application for quashing under Section 482 of CrPC, no offence has been established. There is no allegation to the effect that the promise to marry given to the second respondent was false at the inception. On the contrary, it would appear from the contents of the FIR that there was a subsequent refusal on the part of the appellant to marry the second respondent which gave rise to the registration of the FIR. On these facts, we are of the view that the High Court was in error in declining to entertain the petition under Section 482 of CrPC on the basis that it was only the evidence at trial which would lead to a determination as to whether an offence was established."

Learned counsel for the petitioner further relied upon an authority of Hon'ble Supreme Court in **PRAMOD SURYABHAN PAWAR v. STATE OF MAHARASHTRA AND ANOTHER**², wherein at para 16 it is held 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

¹ 2021 (2) ALD (CrL.) 179 (SC)

² 2020 (2) ALD (CrL.) 400 (SC)

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's* case (*supra*), this Court observed:

"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 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" (Emphasis supplied).

Learned counsel for the petitioner further submits that the other Bench of this Court in similar circumstances has granted pre-arrest bail in Crl.P.No.8012 of 2022 dated 13.09.2022 and he filed a copy of the said order.

08. The contents of complaint as narrated by the victim - *de facto* complainant, would go to show that the petitioner has refused to marry her only on the ground that his mother is not accepting for their marriage. Further, the victim also did not specifically mention in the complaint that the petitioner was not having intention to marry from the inception in order to attract the provisions under Sections 420 and 376 IPC. According to the petitioner, the reason for not marrying the *de facto* complainant is that his mother has not accepted. It is not the intention of the petitioner from the

inception not to marry the victim and to have sexual intercourse with her.

09. Considering the authorities referred by the learned counsel for the petitioner, it is a fit case where the petitioner's request for grant of pre-arrest bail can be considered.

10. In the result, the Criminal Petition is allowed and the petitioner/accused is granted anticipatory bail subject to the following conditions:

i) The petitioner/accused is directed to be surrendered himself before the Ramachandrapuram Police Station, Cyberabad, and on such surrender, the petitioner/accused is ordered to be released on bail on his executing personal bond for a sum of Rs.25,000/- (Rupees Twenty Five Thousand only) with two sureties each for a like sum to the satisfaction of Ramachandrapuram Police Station, Cyberabad.

ii) On such release, the petitioner/accused shall appear before the Ramachandrapuram Police Station, Cyberabad on every first and third Monday and of every

month between 10:00 AM and 12:00 PM., until further orders. The petitioner is also further directed to appear before the police as and when his presence is required for the purpose of investigation. The petitioner/accused is further directed to cooperate with the Investigating Agency.

iii) The petitioner/accused shall abide by the other conditions stipulated in Section 438 of the Criminal Procedure Code.

As a sequel, pending Miscellaneous Applications, if any, shall stand closed.

DR. D.NAGARJUN, J

Date: 11-Jan-2023
Yvkr

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