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

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Reserved on: 29.08.2023
Pronounced on: 04.09.2023

+ **BAIL APPLN. 2880/2023**

RAVI BHUSHAN UPADHYAY Petitioner

Through: Mr. R.K. Chaudhary & Mr.
Raj Kumar, Advocates

versus

THE STATE Respondent

Through: Mr. Satish Kumar, APP for
State with W/SI Neelu, PS
Bindapur, District- Dwarka

CORAM:
HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J.

1. The instant application under Section 438 of the Code of Criminal Procedure, 1973 ('Cr.P.C.') has been filed on behalf of applicant seeking anticipatory bail in FIR bearing no. 389/2023 registered at Police Station Bindapur, Delhi for offences punishable under Section 376 of Indian Penal Code, 1860 ('IPC').
2. Issue notice, Mr. Satish Kumar, learned APP accepts notice on behalf of the State.



3. Brief facts of the case, as per FIR, are that the victim has leveled allegations that the victim was employed in Delhi and she had come in contact with applicant in the year 2015 who was employed in Dibrugarh, Assam and they used to interact during course of their employment and job requirements. It is alleged by the victim that initially she had rejected the advances made by the applicant but upon regular insistence of the applicant, she had agreed to become friends with her after about four-five years and they had started talking to each other regularly through phone calls and video calls. It is also alleged that on 20.02.2021, the applicant had taken her to a hotel where physical relations were established between them on pretext of marriage. It is also alleged that the accused/applicant had also taken her to a temple in Najafgarh where he had given impression that they were married, and he had again promised her that they will get married properly later. Thereafter, on this pretext, he had established physical relations with her on several occasions. It is also alleged that the victim had requested the applicant several times to get married in the Court (civil marriage), however, he had kept sexually exploiting her on one or the other pretext. It is also alleged that later on, he had stopped receiving her phone calls and had refused to get married to her. Therefore, on these allegations, the present FIR was registered on 30.06.2023 under Sections 376 of IPC.

4. Learned counsel for the applicant states that the victim/complainant is appearing before this Court with a request to grant bail to the present accused/applicant since now he is ready to marry her. It is stated that the complaint in this case was lodged by the victim on the



ground that the applicant had committed rape upon her on false pretext of marriage. It is stated that since both of them are willing to get married now, the applicant be granted anticipatory bail.

5. Learned APP for the State, on the other hand, has strongly opposed the bail application on the grounds that the allegations against the applicant are serious in nature and he has never joined investigation and is absconding.

6. The arguments addressed by learned counsel for the applicant and learned APP for the State have been heard.

7. This Court has also gone through the statement of the victim which is recorded by the police as well as the statement recorded under Section 164 of Cr.P.C. before the learned Magistrate.

8. A perusal of the record reveals that in the present case, the applicant had first moved an application seeking anticipatory bail before the learned Additional Sessions Judge-05, South-West, Dwarka Courts, New Delhi which was argued on merits and the same was dismissed *vide* order dated 02.08.2023. The same reads as under:

“During the course of arguments, counsel for the applicant/accused submits that accused is a resident of Assam and working in CJ Dasal Logistics, Assam and he has been falsely implicated in the present case. Counsel for the applicant/accused further submits that applicant was the friend of the complainant. It is further submitted that applicant/accused has neither made any promise to marry with the complainant nor he made any physical relationship with the applicant on the pretext of marriage. It is further submitted that complainant has deliberately mentioned only two dates i.e. 21.02.2021 and 21.04.2022 for the alleged offence of rape but on the said dates applicants visited Delhi for his official work. It is further submitted that applicant/accused is the sole bread earner of the family and there is no previous involvement of the present applicant/accused. It is further submitted that accused is ready to



join the investigation as and when required by the IO. It is prayed that present application be allowed.

On the contra, learned Additional Public Prosecutor and counsel for the DCW have opposed the bail application stating that accused forcibly made a physical relationship with the complainant on 21.02.2021 at Amaster Hotel and on 21.04.2022 at Seven Ever Hotel and he assured that he would get married with her. It is further submitted that there is receipt of the said hotel showing that presence of both the parties in the said hotel. It is further submitted that now the brother of the applicant/accused is causing threats to the complainant to withdraw the present case otherwise she would face the consequences. It is further submitted that facebook account of the complainant has also been hacked by the applicant and he is using abusive language to her. It is further submitted that applicant has not joined the investigation so far and even warrants has been issued against him. It is further submitted that IO went to Assam, particularly, at the residence of the applicant but he was not found there and statement of landlord was also recorded who submits that applicant is not coming after registration of the FIR. It is further submitted that many facts are to be verified from the applicant/accused.

After having gone through the submissions made by both the parties and perusal of the case file, I find that the investigation of the case is at very initial stage and applicant has not joined the investigation despite issuing the notice. Keeping in view of the nature of the offence, at this stage, I am not inclined to grant the anticipatory bail to the applicant.”

9. This order was thereafter assailed when the first bail anticipatory application i.e. *Bail Appln. 2659/2023* was filed before this Court. However, the same was withdrawn by the learned counsel for applicant on 10.08.2023 after addressing some arguments. When arguments on this bail application were heard, the victim was not present before this Court.

10. Interestingly, after withdrawing the aforesaid bail application before this Court on 10.08.2023, the applicant had again approached the learned ASJ seeking grant of anticipatory bail, now on the ground that



the applicant was ready to get married to the victim and she had no objection if the applicant was granted anticipatory bail. This bail application was however also dismissed *vide* order dated 22.08.2023 by the learned ASJ. Aggrieved by this order, the applicant has now approached this Court once again. The concluding portion of order dated 22.08.2023 reads as under:

“...After having gone through the submissions made by both the parties and perusal of the case file, I find that it is the case of the prosecution that applicant has forcefully made physical relationship with the complainant on 21.02.2021 and 21.04.2022 at two different places on the pretext that he would get married with her. First bail application of the applicant was dismissed on 02.08.2023 but there is no substantial development in the present case except applicant wants to marry with the complainant. Keeping in view the aforesaid facts and circumstances and the nature of the offence i.e. offence punishable under Section 376 IPC, at this stage, I am not inclined to grant anticipatory bail to the applicant...”

11. In this background, this Court takes note of the fact that the learned ASJ was pleased to reject the first anticipatory bail application of the accused/applicant on 02.08.2023. At that point of time, neither the complainant had appeared before the Court nor had contended that she did not oppose the bail application as the accused wants to get married to her. Rather, the Court was informed that the Facebook account of the complainant had also been hacked by the applicant and he was using abusive language against her, and the brother of applicant had been threatening her to withdraw the case. Further, learned counsel for the accused had submitted before the Court that the accused had neither promised to get married to her nor was he in a relationship with her at any point of time to have given her promise of marriage and



having got into a sexual relationship on the said pretext. The learned counsel had also argued before the learned Trial Court on the said date that the victim had lodged a false complaint against him.

12. Therefore, this Court notes that till 02.08.2023, and thereafter on 10.08.2023 when the bail application came up for hearing before this Court and was withdrawn after some arguments, there was nothing to suggest that the accused and the complainant were contemplating getting married or that accused had admitted to having a consensual relationship with the victim. Even on the said date, arguments were addressed that the accused had been falsely implicated in the present case.

13. However, a significant shift has occurred in this case when an application for grant of anticipatory bail again came up for hearing before the learned Trial Court on 22.08.2023. The accused/applicant has taken the same stand before this Court that he be granted anticipatory bail as complainant and accused are ready to marry each other. Thus, now the accused/applicant has presented an entirely contradictory stance before this Court, asserting that the complainant is willing to marry him and, therefore, anticipatory bail be granted to him. In this regard, this Court is of the opinion that the victim as per her statement to the police and the Magistrate was always willing to get married to the applicant, however, it was the accused who had denied having ever promised marriage to the victim or having established physical relations with her on pretext of marriage. This Court also takes note of an alleged suicide note written by the victim, wherein she has



threatened to commit suicide since the applicant was unwilling to get married to her.

14. Learned counsel for the applicant has argued that the change of circumstances in this case is that now the parties are ready and willing to get married to each other and that the father of the victim who was earlier not ready for the inter-caste marriage is now ready for marriage between the applicant and the victim.

15. In this regard, in this Court's opinion, the **Courts of law cannot be used as a forum for the purpose of facilitating marriages and be used as marriage facilitators** by first lodging an FIR alleging that the accused, after establishing physical relations, had refused to get married to the victim and later appear before the Court for either grant of bail which they have been opposing for many months. Further, in this Court's opinion, from the examination of the facts and documents on record, it is clear that **the accused as well as the complainant have taken the judicial system and the investigating agencies for a ride and are trying to manipulate the judicial system to their advantage in different ways, one for seeking anticipatory bail though now, non-bailable warrants have already been issued against him since he was absconding and the complainant for getting married to him.**

16. On one hand, learned counsel for the accused stated before the learned ASJ as well as before this Court at the time of arguments on earlier bail applications that the accused had no concern with the allegations in the FIR which are false and frivolous. It was also his contention and argument before this Court as well as the Court of learned ASJ that the accused and the complainant were merely friends



and that the accused had never established physical relations with the complainant on false pretext of marriage, on the other hand, on 22.08.2023 before the learned Trial Court and on 29.08.2023 before this Court, stated that earlier the marriage could not take place due to some difficulties, however, now the petitioner/accused and complainant are ready to marry each other.

17. It is **very strange** that in the pleadings of the present bail application also, it has been stated that applicant has nothing to do with the offence in question and he had come to know from the contents of FIR only that he has committed sexual assault on false pretext of marriage, and also that he and the victim shared friendly relationship with each other and that the applicant had never maintained physical relations with the victim at any point of time. In the same breath, however, he states that the father of the victim is now ready for marriage between the parties who was not ready earlier. These statements, made before the learned ASJ as well as this Court, are **contrary** to each other and clearly point out towards using the Court for their own purposes.

18. This Court is also **constrained to observe** that the complainant herein had first got the present FIR registered and had given statement against the accused that sexual relations were made on false pretext of marriage. This assertion was reiterated by her in her statement recorded under Section 164 of the Cr.P.C. Consequently, the investigating agency and the judicial process were set in motion, subjecting them to all the tedious processes and time-consuming protocols inherent to the investigation of sexual assault cases, till 22.08.2023, including the



efforts to locate and apprehend the accused through search operations in the State of Assam. Throughout this period, the Courts and the investigating agency were burdened with dealing with various bail applications filed by the accused, each of which was contested and opposed by the State and the complainant on the basis of truthfulness and gravity of the allegations contained in the FIR and by accused on the pretext of falsity of allegations. Thereafter, on 22.08.2023, the complainant appeared before the Court of learned ASJ and stated that she wanted the accused to be released on bail, since now both of them want to get married. Once this argument did not find favour with the learned ASJ, the accused has approached this Court with a similar plea and the complainant has appeared before this Court too and has stated that now she no longer wishes to oppose the bail application and stated that the accused be granted anticipatory bail.

19. This is **nothing short of taking the judicial system and the investigating agency for a ride** by both the parties through their conduct and different stands taken before the Courts and the investigating agency. The judicial system and the investigating agency have invested time and resources which need investment of finances and human resources by the State and the judicial system.

20. This Court also notes that there has been a trend in the past to burden the judicial system with such complaints and such cases **clog** the dockets of the Courts. This Court is often faced with litigation where petitions are filed for quashing of FIRs on the ground that the parties have compromised the matter. In many cases, when bail is granted at the request of complainant, after sometime, applications/petitions for



cancellation of bails are filed before this Court on the ground that after obtaining bail, the accused did not fulfill his promise of getting married or that after getting married to the rape victim, the victim was abandoned by the accused.

21. **The Courts cannot be used as a matrimonial facilitators for the purpose of pressurizing the accused to get married to the victim or be denied bail, or by the accused for obtaining bail by asking the complainant to appear before the Court and state that he was ready to get married to her.** Neither the Courts can know as to whether, at this stage, the complainant has been approached and influenced by the accused to give such statement before the Court for one reason or the other, or only for the purpose of obtaining bail. More so, as in this case, there were earlier complaints and allegations by the complainant that the accused and his family were threatening, maligning, defaming her and hacked her Facebook account and accused's brother had been threatening the complainant to withdraw her case. In case the present FIR had been registered under misunderstanding, the Courts and the police would have been informed at the first instance and the parties would have been married instead of the accused absconding and his family threatening her.

22. This Court cannot know as to whether the statement made by the complainant before the authorities throughout and before the Magistrate and the stand of the accused before the learned Trial Court was the correct, true and uninfluenced stand or the later stand of both of them before the Trial Court and this Court is uninfluenced or not. Needless to say, **the judicial system cannot be used either to settle scores with**



each other or pressurize any party to act in a particular manner to reach one's goal.

23. Considering the overall facts and circumstances of the case, this Court does not find it a fit case for grant of anticipatory bail as the case has travelled from the point of lodging of the FIR till the present point of investigation. The truth has to prevail by investigating into allegations for which custodial interrogation of the accused may be required for the purpose of confronting the complainant also with the accused to reach the truth.

24. Accordingly, the present bail application stands dismissed.

25. However, nothing expressed hereinabove shall be construed as expression of opinion on the merits of the case.

26. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

SEPTEMBER 4, 2023/ns