

IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 13.01.2023

+ **BAIL APPLN. 2779/2022**

VIVEK PANDEY

..... Applicant

versus

**THE STATE GOVT OF NCT
DELHI AND ANR.**

..... Respondents

Advocates who appeared in this case:

For the Appellant :Mr. Jatan Singh, Mr. Siddharth Singh &
Mr. Tushar Lamba, Advs.

For the Respondents : Ms. Richa Dhawan, APP for the State, SI
Sandeep, PS Palam Village.
Mr. Shakti Narayan & Ms. Neelima Bagoria,
Advs. for complainant along with
complainant.

CORAM

HON'BLE MR. JUSTICE AMIT MAHAJAN

JUDGMENT

1. The present application under Section 439 of Code of Criminal Procedure, 1973 ("Cr.P.C.") is filed seeking regular bail in FIR No. 566/2022, dated 24.08.2022, under Sections 376/509/506 of Indian Penal Code, 1860 ("IPC"), at Police Station Palam Village.

2. The FIR was registered on a complaint by the prosecutrix alleging that the applicant raped her on the pretext of marriage.

3. It is alleged that the applicant was looking for a job. He met the prosecutrix during his visit to her office, situated at Chamber No. 5, Pusa Road, Rajendra Place, where she was working as a HR Manager.

The two started meeting each other frequently and this culminated into a relationship between them. They also established physical relations with each other. The applicant promised to marry the prosecutrix and in the pretext of the same, also established forceful physical relations with her. During the course of relationship, the prosecutrix also got pregnant and was forced to take abortion pills by the applicant.

4. Later, the applicant refused to marry the prosecutrix and established relations with other women, which led to registration of the FIR by the prosecutrix. The applicant was arrested on 24.08.2022.

5. The applicant had filed a bail application no. 2312/2022 before the learned ASJ, Dwarka Court, New Delhi, which was dismissed by order dated 29.08.2022.

6. Learned Counsel for the applicant submits that the applicant has been falsely implicated in the present case.

7. He submits that, admittedly, the prosecutrix was in a physical relationship with the applicant for more than six months, prior to filing of the complaint.

8. He submits that the place of incident has been alleged to be one Hotel in Dwarka which was booked by the prosecutrix herself. The register maintained by the Hotel shows the checkout time at 08:15 p.m. whereas the allegation has been made that the prosecutrix was raped during the whole night.

9. The prosecutrix has also refused any internal examination.

10. Learned Counsel for the prosecutrix states that the applicant promised to marry her and also introduced her to his friends and relatives as his wife and in the pretext of the same, established forceful physical relations with her. During the course of relationship, she also got pregnant and was forced to take abortion pills by the applicant.

11. He further submits that the conduct of IO (Ms. Laxmi), in the present case, is very dubious as she constantly favours the applicant and has not conducted extensive investigation and has also not revealed the whatsapp chat between the prosecutrix and the applicant because of which the real truth could not be articulated.

12. Learned Counsel for the prosecutrix further submits that the prosecutrix is also getting life threats and the applicant has also threatened to throw acid on her. So, there is a high probability that there is a threat to the life of the prosecutrix if the applicant is released on bail.

Conclusion

13. The investigation, in the present case, is complete and the chargesheet has already been filed.

14. The statement of the prosecutrix was record by the learned Trial Court on 12.12.2022.

15. She has admitted that she had gone to the hotel room on the date of incident, that is, 08.05.2022, on her own *albeit* on continued insistence by the accused.

16. At this stage, it appears that the complaint was given initially to the National Commission for Women on 14.06.2022 and, thereafter, to the Police on 24.08.2022 only when the applicant / accused blocked the mobile phone of the prosecutrix. The prosecutrix has also stated that she did not pursue the complaint when the applicant / accused promised to marry her and when he again started avoiding her and refused to marry, the complaint was ultimately given to PS Palam Village.

17. The Hon'ble Apex Court in ***Pramod Suryabhan Pawar v. The State of Maharashtra & Anr.; SLP(Crl.) No. 2712 of 2019; (2019) 9 SCC 608***, by its judgement dated 21.08.2019 had summarised to the legal position when a woman complains of the sexual intercourse on a false promise of marriage. It was held 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.”

18. In the present case, it is admitted that the prosecutrix had known the applicant and was meeting the applicant on regular basis. It is also seen from the statement given to the Magistrate that she accompanied the applicant to the hotel room on her own will. It is alleged that she,

initially resisted having sexual intercourse but agreed when the applicant told her that he would marry after talking to his parents.

19. Even though it is alleged that the prosecutrix got pregnant and was forced to abort the foetus, however, no evidence has been brought on record, at this stage, to corroborate the said allegation.

20. Whether the consent of the prosecutrix was vitiated by misconception of fact arising out of promise to marry, cannot be established at this stage and would be a matter of trial.

21. It is apparent that the prosecutrix is a literate person and even prior to the alleged incident, was meeting the accused on regular basis.

22. Even though it is alleged that the applicant has threatened to throw acid on her, however, nothing has been brought on record to substantiate such threats.

23. It is also significant that the prosecutrix is 32 years old whereas the applicant is 22 years of age. Therefore, whether the consent of the prosecutrix was obtained on a false pretext of marriage, considering the age difference and the fact that the prosecutrix is a literate person working as HR Manager in a company, cannot be presumed.

24. It is also alleged on behalf of the applicant that the hotel was booked by the prosecutrix herself and the Manager of the hotel has also given a statement to that effect. The same, however, would be tested at the time of trial.

25. The FIR was registered on a complaint given by the prosecutrix on 24.08.2022, for an alleged incident which happened on 08.05.2022. Therefore, there is a considerable delay in lodging the complaint.

26. The applicant is in custody since 24.08.2022 and the trial is likely to take a long period of time before it reaches the finality.

27. It is not in dispute that the offence as alleged is heinous in nature. However, it cannot be lost sight of the fact that the object of jail is not punitive but to secure the presence of the accused during the trial. The aspect that the prosecutrix was in a physical relation much prior to filing of the complaint, the same whether was consensual or was on pretext of marriage which was false since the very inception would be established after the trial.

28. Without commenting further on the merits of the case and keeping the facts and circumstances in mind as mentioned above, I am satisfied that no purpose would be served by keeping the applicant in further incarceration.

29. The applicant is, therefore, directed to be released on bail on furnishing a bail bond for a sum of ₹50,000 with two sureties of the like amount to the satisfaction of the learned Trial Court/ Duty Metropolitan Magistrate, subject to the following terms and conditions:

- i) The applicant shall upon his release provide his mobile number to the concerned IO/SHO and shall keep his mobile phone switched on at all times;

- ii) The applicant shall not take unwarranted adjournment and attend the Trial Court proceedings on every date;
- iii) The applicant will not leave the city without informing the concerned IO / SHO;
- iv) The applicant shall not in any manner contact the complainant or the witnesses;
- v) The applicant shall not in any manner tamper with the evidence;
- vi) The applicant shall not leave the country without permission of the learned Trial Court.

30. In the event of there being any FIR / complaint lodged against the applicant or the applicant is found to have violated the conditions stated above, the State is at liberty to file an appropriate application seeking cancellation of bail.

31. The present application is allowed in the aforesaid terms.

32. It is, however, made clear that any observation made in the present order are only for the purpose of deciding the present application and no should not influence the outcome of the trial and also not be taken as an expression of opinion on the merits of the case.

33. *Dasti under signature(s) of the Court Master.*

AMIT MAHAJAN, J

JANUARY 13, 2023

“SS”