

the applicant was got trapped in love. 4. That the accused started giving false promises to the applicant that he will marry me and he will always held me and never leave you. That when the applicant completely comes under the influence of the accused call the applicant in Star Ligh Hotel Fatehabad in the month of February, 2023 and on the pretext of marriage he made physical relationship with the applicant. 5. That thereafter when the applicant said to the accused for solemnizing the marriage then the accused stated that once he will get the Govt. job then thereafter, we both will marry. That like this accused continuously made physical exploitation of the applicant and continuously made relationship with the applicant by taking her at Hotel situated at Bhattu and Hotel situated in Fatehabad (Parul and Star Light). 6. That now on dated 24.05.2023 last time accused called the applicant at Star Light Hotel Fatehabad where the accused has made physical relationship with the applicant and thereafter, the applicant threatened by the accused that he need of Rs.50,000/- otherwise he is having your obscene video, photo and recording and you will not fulfill my demand I will viral your photo, video and recording to your relative and on social media and will defame you. Thereafter it is humbly submitted to goodself strict legal action be taken and FIR may kindly be registered against the accused for making physical relationship on the pretext of marriage making and threatening of viral obscene photographs, video records and black mailing the applicant....”

Learned counsel for the petitioner, *inter alia*, submits that at the time of alleged incident both, the victim and the petitioner, were major. It is submitted that the victim was in a consensual relationship with the petitioner. Husband of the victim had died on 15.08.2014. Thereafter, the petitioner who does the work of plumbing and electric fittings had visited the house of the victim in December, 2022, for repairing the inverter wires; whereafter they developed a consensual relationship. It is contended that, therefore, allegations made in the FIR that the petitioner had raped the victim on the pretext of marriage are utterly false as the parties were in a consensual relationship. In support of his contentions, learned counsel for the petitioner has placed reliance

upon a judgment of the Hon'ble Apex Court in 'Ansaar Mohammad vs. State of Rajasthan and another', 2022(3) RCR (Criminal) 917, wherein while granting pre-arrest bail to the appellant therein, it was held that *"failure of relationship cannot be ground for lodging the FIR for offence under Section 376(2)(n) IPC"*. It is further submitted that the first incident took place in the month of February, 2023, and the last incident was in the month of May, 2023 i.e. dated 24.05.2023, as admitted in the FIR; whereas the present FIR was registered on 30.05.2023. There is unexplained delay of 06 days in lodging the FIR. The petitioner has been in custody since 01.06.2023. The trial is likely to take long time. No useful purpose will be served by further detention of the petitioner in custody. Thus, it is prayed that petitioner may be released on regular bail.

Learned counsel for the State has filed custody certificate dated 19.02.2024, which is taken on record, as per which the petitioner has been in custody as an undertrial for a period of 08 months and 18 days. As per custody certificate, there is no other case against the petitioner. It is submitted by learned counsel for the State that challan in the present case was presented against the petitioner and charges were framed by the trial Court on 22.12.2023. However, no prosecution witness has been examined, till date. The FSL report is positive as semen was found on the clothes of the victim, however, DNA report is still awaited. It is further submitted that the victim in her statement recorded under Section 164 Cr.P.C. has fully supported the prosecution case.

Having heard learned counsel for the parties, but without commenting on merits of the case, however, keeping in view the totality of the facts and circumstances of the case including the fact that the

petitioner has been in custody as an undertrial for a period of 08 months and 18 days and the custody certificate shows that there is no other case against the petitioner; and as no PW has been examined till date, therefore, conclusion of trial will take considerable time. As such, no useful purpose would be served by further detention of the petitioner. Thus, the present petition is **allowed**.

The petitioner-Rakesh Kumar S/o Suresh Kumar is ordered to be released on regular bail on his furnishing bail/surety bonds to the satisfaction of the trial Court/Chief Judicial Magistrate/Duty Magistrate, concerned.

However, it is made clear that nothing stated above shall be construed as an expression of opinion on the merits of the case.

20.02.2024
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(NIDHI GUPTA)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No