

making promise to marry her, he forcibly committed rape upon her. Thereafter, sexual relations were regularly developed between them as the petitioner had been making assurance to marry her, after consulting his parents. She alleged that on 20.03.2023, the petitioner demanded money from her by telling that he wanted to participate in the election of "Parishad" and on her refusal, he forcibly took all her gold and silver ornaments with him. She had been called by him to Agra on 16.07.2023 whereby taking her in a hotel, he committed rape upon her against her wishes and then while refusing to marry her and extending threat to kill her, sent her back. After registration of FIR, investigation proceedings were initiated. The petitioner was arrested on 19.09.2023. The statement of the prosecutrix was recorded under Section 164 of Cr.P.C., wherein she reiterated the same allegations. After completion of necessary investigation and usual formalities, challan was presented in the Court and presently, the petitioner is facing trial for commission of offences punishable under Sections 376(2)(n), 406 and 506 of IPC. He had moved an application for grant of regular bail before the learned trial Court which was dismissed vide order dated 20.10.2023.

3. The present petition has been filed by the petitioner on the grounds and it is argued by his counsel that he has been falsely implicated in this case. The marriage of the prosecutrix with her husband was subsisting at the time when they came into contact with each other and she had wrongly represented herself to be divorcee. Infact, it was a case of consensual sexual relationship between the petitioner and the prosecutrix. Both of them are adults. There was no question of the petitioner making any promise to marry

the prosecutrix. Rather the prosecutrix herself never wanted to marry him and had developed relations with him with a view of extort money from him. It is further argued by learned counsel for the petitioner that the prosecutrix is in the habit of trapping innocent persons and than lodging cases against them for extorting money and in collusion with her daughter, previously, she had got registered another case bearing FIR No. 43 of 2005 on the allegations of rape at Police Station Narkhi, District Firozabad, wherein she had demanded huge amount of money from the accused persons. It is further argued that the trial is likely to take time. The ingredients for commission of offence punishable under Section 376 of IPC are not made out against him. He had never made any promise to marry her nor the prosecutrix could be assumed to be under any mis-conception of fact that he would perform marriage with her as her own marriage is subsisting so far. With these broad submissions, it is urged that the petitioner deserves to be extended benefit of bail.

4. Status report has been filed by respondent-State as per which, the prosecutrix had been medically examined on 15.03.2023 and as per the opinion of doctor, possibility of her being subjected to sexual intercourse could not be ruled out. It is also submitted that since the prosecutrix was a married woman, therefore, no swabs or clothing etc. has been sent for forensic examination. It is also submitted that there were serious allegations against the petitioner. There are chances of his intimidating the witnesses, if extended benefit of bail. Hence, it is argued that he does not deserve to be given concession of bail.

5. I have heard learned counsel for the petitioner as well as learned State counsel at considerable length and have gone through the record carefully.

6. The case of the prosecution is that in September, 2022, the petitioner had come into contact with the prosecutrix who is a thirty-five years old adult female and by making promise to marry her, he had established physical relations with her and continuously maintained the same and later on refused to perform marriage with her. As per further allegations, he had also taken her gold and silver ornaments, criminally misappropriated and converted the same to his own use and also extended threats to her. The petitioner is in custody since 17.09.2023. As per his claim, it was a case of consensual physical relationship. The prosecutrix is an adult female with a daughter who is fifteen years old. It has come on record that though she claimed herself to be a divorcee but she has not been legally divorced from her husband as petition filed by her seeking divorce had been dismissed in default in the year 2018. At this stage, this Court cannot draw any definite conclusion that it was a case of consensual relationship or a case of subjecting the prosecutrix to rape by making false promise of marry, as this fact can be determined by thorough assessment and evaluation of evidence to be produced before the trial Court. However, keeping in view the nature of the allegations, which have come on record and which show that the prosecutrix had maintained physical relations with the petitioner from September, 2022 to till July, 2023 as per her own volition and had not reported the matter to the police earlier, the fact that she herself

was married at that time and therefore, could not be presumed to be having any mis-conception of fact that the petitioner would solemnize marriage with her, it appears to be a case of consensual relationship between the parties having turned sour. Keeping in view the nature of the subject offences, the complicity of the accused, the uncertainty regarding conclusion of the trial and the attendant facts and circumstances of the case, but without meaning to make any comments on the merits of the case, I am of the considered opinion that the petitioner has made out a case for release on bail at this stage. Therefore, the petition is allowed and the petitioner is ordered to be released on bail subject to his furnishing personal/surety bonds to the satisfaction of the Chief Judicial Magistrate/ Duty Magistrate concerned subject to his complying with the following conditions:-

- (i) He shall not tamper with the prosecution evidence by intimidating/pressurizing the witnesses including the prosecutrix during trial;
- (ii) He shall co-operate in the trial sincerely without seeking any adjournment;
- (iii) He will not indulge in any criminal activity or commission of any crime after being released on bail;
- (iv) He shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the police officer.

7.

It is further clarified that if in the opinion of the trial Court

petitioner commits deliberate default of the same, then it shall be open for the trial Court to treat such default as abuse of liberty of his bail and proceed against him in accordance with law.

8. Since the main petition has been allowed, pending application if any is rendered infructuous.
9. A copy of this order be sent to the concerned Court.

19th April, 2024

Parveen Sharma

1. Whether speaking/ reasoned

2. Whether reportable

[MANISHA BATRA]

JUDGE

:

:

Yes

Yes