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

+ **BAIL APPLN. 349/2023**

DHEERAJ MANRAL

..... Applicant

Through: Mr. Sumit Chaudhary,
Adv.

versus

THE STATE (GOVT. OF NCT OF DELHI) AND ANR

..... Respondents

Through: Mr. Utkarsh, APP for the
State

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

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26.02.2024

1. The present application is filed under Section 438 of the Code of Criminal Procedure, 1973 ('CrPC') seeking pre-arrest bail in FIR No. 60/2023 dated 13.01.2023, for offences punishable under Section 376 of the Indian Penal Code, 1860 ('IPC'), registered at Police Station Karol Bagh.

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

3. It is alleged that the prosecutrix knew the applicant through Facebook since the year 2019 and also started working together in the same company where they became good friends and fell in love with each other.

4. It is alleged that on 04.11.2020, the applicant called the prosecutrix at Hotel Kabila where he made sexual relations with her on the pretext of marriage, after which he started avoiding any conversation with respect to marriage.

5. It is alleged that on 11.06.2022, the applicant again

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established physical relations with the prosecutrix on the pretext that he will marry her very soon.

6. On 07.08.2022, during the time when the prosecutrix visited her home town in Madhya Pradesh, the applicant sent her a message that he is unable to marry her as his parents were getting him married with some other girl.

7. The prosecutrix came back to Delhi on 07.10.2022 and when the applicant did not respond to her messages and calls, she on 08.11.2022 made a PCR call since she had an apprehension that the applicant would leave the country and has also taken some money from her.

8. It is alleged that thereafter, the applicant came to visit the prosecutrix in the police station and again made a promise to marry her and told her that he is going to Malaysia for some work-related meeting. The applicant took the prosecutrix to Court where the applicant got an agreement prepared, signed by both and it was stated in the agreement that he would marry the prosecutrix within a month.

9. It is further alleged that the applicant again stopped responding to the calls and messages made by the prosecutrix and also refused to marry her.

10. The learned Counsel for the applicant submits that the applicant has been falsely implicated in the present case. 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.

11. The learned counsel for the applicant submits that as per the FIR, the applicant and prosecutrix first established physical relations on 04.11.2020 and thereafter on 11.06.2022. He submits that the FIR was registered on 13.01.2023 with a delay of
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approximate four months and no reasoning for the delay is provided by the prosecutrix.

12. He submits that the prosecutrix is aged about 23 years, well-qualified, and matured lady who is aware of surroundings and the consequences of her acts. It is evident that the prosecutrix made a complaint of rape against the applicant, subsequent to which the present FIR got registered, only to coerce the applicant to continue with the relationship and marry her.

13. He submits that the petitioner has always intended to marry the prosecutrix but owing to the caste differences, it was becoming difficult for the applicant to make his family agree. He submits that it was only due to some subsequent quarrels and complaining attitude of the prosecutrix, the parents of the applicant became sterner with respect to their disapproval of the marriage.

14. He submits that the petitioner is young man of 28 years of age and has no antecedents. He further submits that all the evidence with respect to the applicant is already in possession with investigating agency, the charge sheet has been filed and no custodial interrogation of the applicant is required.

15. The learned Additional Public Prosecutor for the State opposes the grant of present bail application. He submits that the prosecutrix and the applicant had known each other for quite some time and the applicant had made a promise of marriage to the prosecutrix and on that false pretext made sexual relations with her.

16. He submits that during the course of investigation the prosecutrix was medically examined and was counselled by the counsellor. He submits that prosecutrix in her statement under Section 164 of Cr.P.C has supported the case of the prosecution.

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17. He submits that a notice under Section 91 of Cr.P.C, was sent to the owner of hotel Kabila, Karol Bagh to provide the details of the entry register with respect to the alleged date i.e., 04.11.2020. He submits the owner has provided the copy of the register which records that the applicant and the prosecutrix had stayed in the hotel from 04.11.2020 to 05.11.2020.

18. He submits that the potency test of the accused also shows that there is nothing to suggest that the applicant is incapable of having sexual intercourse.

19. The applicant by order dated 03.02.2023, was granted interim protection by this Court subject to him joining the investigation. It is not in dispute that applicant has since joined the investigation.

20. While determining the parameters in granting pre-arrest bail, the Hon'ble Supreme Court in ***Siddharam Satlingappa Mhetre v. State of Maharashtra***, (2011) 1 SCC 694 held as under:

“112.

(i) *The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;*

(ii) *The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a court in respect of any cognizable offence;*

(iii) *The possibility of the applicant to flee from justice;*

(iv) *The possibility of the accused's likelihood to repeat similar or other offences;*

(v) *Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her;*

(vi) *Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people;*

(vii) *The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role of the accused in the case. The cases in which the accused is implicated with the help of Sections 34 and 149 of the Penal Code, 1860 the court should consider with even greater care and caution because over implication in the*



cases is a matter of common knowledge and concern;
(viii) While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors, namely, no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused;
(ix) The court to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;
(x) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.”

21. The applicant has sought the grant of pre-arrest bail on the ground that the FIR in present case is the result of calling-off of the marriage between the applicant and the prosecutrix.

22. The allegation made is that the applicant had made physical relations with prosecutrix on the pretext of marriage. It is relevant to note that the prosecutrix knew the applicant from quite some and was working in the same company and continued to have physical relations from the year 2020 upto the filing of the complaint.

23. Although it is not in doubt that that mere statement of the prosecutrix is sufficient for establishing the offence of rape if the same inspires confidence.

24. The Hon'ble Apex Court in ***Pramod Suryabhan Pawar v. The State of Maharashtra & Anr. : (2019) 9 SCC 608***, has summarised 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.”

25. 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 the same would be a matter of trial.

26. It is not in doubt that order for grant of pre-arrest bail cannot be passed in a routine manner so as to allow the accused to use the same as a shield. At the same time, it cannot be denied that great amount of humiliation and disgrace is attached with the arrest. In cases where the accused has joined investigation, cooperating with the Investigating Agency and is not likely to abscond, the custodial interrogation should be avoided.

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.

28. In the present case there is no cavil that the parties were known to each other and were in a relationship with each other. Plainly, failure of a man to live up to the promises would not render a consensual intimate act as rape. It is also obvious that such consent would also be based on account of mutual attraction and not merely because a man promises marriage.

29. It is not disputed that the applicant has joined the investigation and the fact that charge sheet has already been filed. There are no chances of the applicant fleeing from justice or tampering with evidence. The apprehension, even otherwise, can



be taken care of by putting appropriate conditions. It is trite law that where the court is of the considered view that the accused has joined the investigation and he is fully cooperating with the investigating agency and is not likely to abscond, in that event, custodial interrogation should be avoided since, a great ignominy, humiliation and disgrace is attached to arrest. [Ref : ***Bhadresh Bipinbhai Sheth v. State of Gujarat : (2016) 1 SCC 152***]

30. In view of the aforesaid settled principles, and the fact that the applicant has been on interim protection, and during this period, there is no allegation of him trying to influence the witnesses or the prosecutrix, this Court considers it apposite that in the event of arrest, the applicant be released on bail on furnishing a personal bail bond for a sum of ₹20,000/- with one surety of the like amount to the satisfaction of the concerned SHO, subject to the following conditions:

- a. The applicant shall join and cooperate with further investigation as and when required by the Investigation Officer (IO);
- b. The applicant shall appear before the learned Trial Court as and when directed;
- c. The applicant shall not contact/intimidate the prosecutrix in any manner;
- d. The applicant 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/her from disclosing such facts to the Court or to any police officer;
- e. The applicant shall provide his mobile number to the concerned IO and keep it operational all the times, and
- f. The applicant shall in case of change in his residential



address, and/or mobile number, intimate the concerned IO.

31. It is clarified that the observations made in the present order are for the purpose of deciding the present pre-arrest bail application, and should not influence the outcome of the Trial and should not be taken, as an expression of opinion, on the merits of the case.

32. The present application is allowed in the aforementioned terms. Pending application also stands disposed of

AMIT MAHAJAN, J

FEBRUARY 26, 2024

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