



2024:DHC:1115



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

% Judgment delivered on: 12th February, 2024

+ BAIL APPLN. 466/2024

SHANE HAIDER

..... Petitioner

Through: Mr. Ravindra Narayan and Mr.
Madhav Narayan, Advs.

versus

STATE OF NCT OF DELHI THROUGH SHO PS PAHAR GANJ

..... Respondent

Through: Mr. Raghuinder Verma, APP for State
with W/SI Anshu Kumari Police
Station Paharganj, New Delhi

CORAM:

HON'BLE MR. JUSTICE VIKAS MAHAJAN

JUDGMENT

VIKAS MAHAJAN, J. (ORAL)

1. The present petition has been filed under Section 438 CrPC in connection with FIR No. 97/2024 under Sections 376/506 IPC registered at Police Station Pahar Ganj.
2. The case of the prosecution as borne out from the FIR is that the complainant, who is a graduate and aged about 25 years, went to Police Station Pahar Ganj and disclosed that she has been working in a company named Herbitecture Health Care, where she met one Pardeep Lodhi (*Bhai*), who was also working in the said company.
3. The petitioner/accused had earlier worked with said Pardeep Bhai and



through him the complainant/prosecutrix came in contact with the petitioner and they became friends. Thereafter, the petitioner proposed the complainant/prosecutrix for a relationship but the prosecutrix told him that she is not interested in a time-pass relationship, on which the petitioner made her understand that he wish to spend his entire life with her after getting married and that he will also persuade his family once his sister gets married.

4. It is alleged that on 15.01.2023, the petitioner met her for the first time and took her to Centra Inn Hotel in Pahar Ganj, where he forcibly established physical relationship with the complainant/prosecutrix and threatened her that in case she disclosed this to anyone, he will kill her. He then, assured the prosecutrix that after the marriage of her sister he will persuade everyone in the family for his marriage with her.

5. It is further alleged that the prosecutrix again met the petitioner in Centra Inn Hotel on 15th and 16th February, 2023. Thereafter on 22.05.2023 the petitioner took the prosecutrix to his residence where his sister was also present and there again he established physical relations with the complainant.

6. On 18.11.2023, the marriage of the petitioner's sister was solemnised which was also attended by the prosecutrix as she had been invited by the petitioner to attend the same. After the marriage of his sister, when the prosecutrix asked the petitioner to speak to his family about their marriage, then the petitioner again called her to the same Hotel on 05.12.2023 and established physical relations with her against her wishes. However, when the prosecutrix asked the petitioner about their marriage he tried to ignore



and said that after the marriage of his sister he had spoken to his mother but her mother has not consented for their marriage and he cannot marry her against the wishes of his family. It is thus, alleged that the petitioner has established physical relationship with the prosecutrix on the false promise of marriage.

7. The learned counsel for the petitioner submits that as per the prosecution version, the prosecutrix herself is aged about 25 years and she is a graduate. Further, the prosecutrix is a working woman, therefore, she is of sufficient maturity and intellectual capacity to understand the repercussions of her visiting the hotel repeatedly with the petitioner, who is aged about 23 years i.e. two years younger to her.

8. He further submits that the first incident is of 15.01.2023 when the petitioner established physical relationship with the prosecutrix forcibly and thereafter, threatened the prosecutrix, but no complaint whatsoever, was made by the prosecutrix in this regard for a period of almost one year, in as much as, the FIR has been registered only on 18.01.2024, even when the prosecutrix had all the opportunity to make a complaint, in case the sexual encounter was against her wishes. Furthermore, the complainant has not shared the said incident with anyone in the family.

9. He submits that a bare reading of the FIR shows that the petitioner was keen to marry the prosecutrix and he had taken her to his house where his sister was also present. Thereafter, he even invited the prosecutrix to his sister's marriage, which was, in fact, attended by the prosecutrix. This according to the learned counsel, itself shows the *bona-fide* intention of the petitioner as he made an endeavour that his family should meet the



prosecutrix.

10. He submits that it is only after the petitioner spoke to his mother, subsequent to his sister's marriage, that the mother did not approve of his marital alliance with the prosecutrix and when this development was shared by the petitioner with the prosecutrix, she got the FIR registered.

11. He submits that the petitioner had no intention of not marrying the prosecutrix from the inception and it is not a case of false promise.

12. In support of his contention, reliance has been placed by the learned counsel on the decision of the Hon'ble Supreme Court in ***Pramod Suryabhan Pawar vs. State of Maharashtra and Anr., (2019) 9 SCC 608*** and ***Deepak Gulati vs. State of Haryana, (2013) 7 SCC 675***, wherein the Hon'ble Supreme Court observed that there is a distinction between mere breach of promise and not fulfilling a false promise.

13. He submits that the petitioner has just graduated from the Delhi University and has clean antecedents. He contends that it is a case of consensual relationship and the petitioner could not keep his promise to marry the prosecutrix only for the reason that the petitioner's mother did not approve of their marital alliance.

14. He submits that the petitioner undertakes to join the investigation as and when directed by the I.O concerned and he will abide by all such conditions as may be imposed by this Court while granting anticipatory bail to the petitioner. He, therefore, urges that the petitioner be enlarged on bail.

15. *Per contra*, the learned APP for the State has opposed the bail on the ground that the offence is serious in nature and the prosecutrix was threatened by the petitioner and it is for the said reason that she did not make



any complaint. He submits that it is only on the basis of false promise of marriage that the prosecutrix had repeatedly submitted to the physical relationship.

16. I have heard the learned counsel for the petitioner, as well as, the learned APP for the State.

17. The sum and substance of the allegations made in the FIR, as evident from the last sentence of the FIR, is that the petitioner has established physical relationship with the prosecutrix on the false promise of marriage. A perusal of the allegations made in the FIR shows that the prosecutrix and the petitioner were in relationship since January 2023. It is also the case of the prosecution that the petitioner had once taken the prosecutrix to his house where his sister was present. Thereafter, he even invited the prosecutrix to her sister's marriage, which *prima facie* indicates petitioner's intention that he wanted his family to see and meet the prosecutrix. However, reading of the FIR also shows that subsequently the mother of the petitioner for some reason did not approve of marital alliance between the petitioner and the prosecutrix. In this backdrop, it cannot *prima facie* be said that the petitioner had no intention to marry the prosecutrix from the inception or that the petitioner had made any false promise of marriage to deceive the prosecutrix.

18. In *Deepak Gulati vs. State of Haryana, (2013) 7 SCC 675*, the Supreme Court observed that there is a distinction between mere breach of promise and not fulfilling a false promise. The relevant observations reads as under:-

“21. Consent may be express or implied, coerced or misguided, obtained willingly or through deceit. Consent is an act of reason,



*accompanied by deliberation, the mind weighing, as in a balance, the good and evil on each side. **There is a clear distinction between rape and consensual sex and in a case like this, the court must very carefully examine whether the accused had actually wanted to marry the victim, or had mala fide motives, and had made a false promise to this effect only to satisfy his lust, as the latter falls within the ambit of cheating or deception. There is a distinction between the mere breach of a promise, and not fulfilling a false promise. Thus, the court must examine whether there was made, at an early stage a false promise of marriage by the accused; and whether the consent involved was given after wholly understanding the nature and consequences of sexual indulgence. There may be a case where the prosecutrix agrees to have sexual intercourse on account of her love and passion for the accused, and not solely on account of misrepresentation made to her by the accused, or where an accused on account of circumstances which he could not have foreseen, or which were beyond his control, was unable to marry her, despite having every intention to do so. Such cases must be treated differently. An accused can be convicted for rape only if the court reaches a conclusion that the intention of the accused was mala fide, and that he had clandestine motive.***

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24. Hence, it is evident that there must be adequate evidence to show that **at the relevant time i.e. at the initial stage itself, the accused had no intention whatsoever, of keeping his promise to marry the victim.** There may, of course, be circumstances, when a person having the best of intentions is unable to marry the victim owing to various unavoidable circumstances. The “failure to keep a promise made with respect to a future uncertain date, due to reasons that are not very clear from the evidence available, does not always amount to misconception of fact. In order to come within the meaning of the term “misconception of fact”, the fact must have an immediate relevance”. Section 90 IPC cannot be called into aid in such a situation, to pardon the



act of a girl in entirety, and fasten criminal liability on the other, unless the court is assured of the fact that from the very beginning, the accused had never really intended to marry her.”

(Emphasis supplied)

19. In ***Pramod Suryabhan Pawar vs. State of Maharashtra and Anr., (2019) 9 SCC 608***, the Supreme Court has also laid down that to establish that the “consent” was vitiated by a “misconception of fact” arising out of a promise to marry, the promise of marriage must be a false promise, given in bad faith and with no intention of being adhered to at the time it was given and the woman’s decision to engage in the sexual act must bear a direct nexus to such false promise. The relevant part of the decision reads as under:-

“14. In the present case, the “misconception of fact” alleged by the complainant is the appellant's promise to marry her. Specifically in the context of a promise to marry, this Court has observed that there is a distinction between a false promise given on the understanding by the maker that it will be broken, and the breach of a promise which is made in good faith but subsequently not fulfilled.....

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16. Where the promise to marry is false and the intention of the maker at the time of making the promise itself was not to abide by it but to deceive the woman to convince her to engage in sexual relations, there is a “misconception of fact” that vitiates the woman's “consent”. On the other hand, a breach of a promise cannot be said to be a false promise. To establish a false promise, the maker of the promise should have had no intention of upholding his word at the time of giving it. The “consent” of a woman under Section 375 is vitiated on the ground of a “misconception of fact” where such



misconception was the basis for her choosing to engage in the said act....

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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.

(Emphasis supplied)

20. Further, the first instance alleged in the FIR is of 15.01.2023 and in case the prosecutrix was under any kind of threat, it is not understandable as to why no complaint was made by the complainant when she had all the opportunity for the same. It appears from the contents of the FIR that the relationship between the petitioner and the prosecutrix have continued even thereafter, as the prosecutrix had been coming to the same hotel at Pahar Ganj where the petitioner and prosecutrix repeatedly had sexual encounters. Thus, *prima facie*, it appears that the prosecutrix was in relationship with the petitioner out of choice, rather out of compulsion or force. It seems that when the prosecutrix realized that the relationship may not fructify into marriage, the FIR was registered.

21. This Court cannot be unmindful of the fact that the prosecutrix is a graduate and a working woman aged about 25 years, possessing sufficient



maturity and intellect to understand the consequence of her act and would also be conscious of the fact that the marriage alliance with the petitioner would be subject to the approval by the petitioner's family, since the petitioner, as per the allegations, had been repeatedly telling the prosecutrix that he will try to persuade his family/mother for their marriage.

22. That apart, the factum that whether it is a case of 'false promise' or 'breach of promise' on part of the petitioner does not require any custodial interrogation as it is a matter to be decided at the stage of trial. Further, it is also not the case of the prosecution that the petitioner has any criminal record. On the contrary, the petitioner is stated to have recently graduated from the Delhi University and sending him to jail will affect his career which is yet to begin. No threat perception has been alleged by the State.

23. In any case, appropriate conditions can be imposed to ensure the availability of the petitioner to face the trial and to prevent him from influencing the witnesses in any manner.

24. Having regard to the facts and circumstances of the case, this Court is of the opinion that the petitioner is entitled to the concession of anticipatory bail. Accordingly, it is directed that in the event of petitioner's arrest, he may be released on bail subject to his furnishing a personal bond in the sum of Rs. 20,000/- and a surety bond in the like amount subject to the satisfaction of the Arresting Officer/SHO concerned, further subject to the following conditions:-

- (i) Petitioner shall join investigation as and when directed by the I.O concerned.
- (ii) Petitioner shall not leave NCT of Delhi without prior permission



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of the learned Trial Court/Ld. MM concerned.

(iii) Petitioner shall not influence the witnesses in any manner or try to contact the complainant or tamper with the evidence.

25. The petition stands disposed of.

26. It is clarified that the observations made herein above are only for the limited purpose of deciding the present bail application and the same shall not be construed as an expression of opinion on the merits of the case.

27. Order *dasti* under signatures of the Court Master.

28. Order be uploaded on the website of this Court.

VIKAS MAHAJAN, J

FEBRUARY 12, 2024

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