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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **BAIL APPLN. 810/2024**

MD. JUNAID

.....Applicant

Through: Mr. Shubham Prajapati,
Mr. Philip Massey, Ms.
Kajal Priya, Mr. Manish
Sharma & Mr. Sanjay
Rana, Advocates.

versus

STATE OF NCT OF DELHI & ANR.Respondents

Through: Mr. Ajay Vikram Singh,
APP for the State with Mr.
Kartik Bhardwaj, Mr.
Keshav Mudgil, Mr.
Satyavrat Sharma & Mr.
Rahul Gaur, Advocates.
SI Aarti (P.S. Bhalswa
Dairy).
Ms. Sunita Arora,
Advocate for Complainant
(DHCLSC).

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

% **ORDER**
15.07.2024

1. The present application is filed seeking pre-arrest bail in FIR No.224/2024 dated 04.02.2024, registered at police station Bhalswa Dairy, for offences under Sections 363/376 of Indian Penal Code, 1860 & Section 6 of the Protection of Children from Sexual Offences Act, 2012.

2. It is the case of the prosecution that the victim was in a relationship with the applicant since June, 2023. It is alleged that in July, 2023, the applicant took the victim to an Oyo Hotel on

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the pretext of an excursion. He alleged that the applicant gave something to the victim to drink and thereafter established sexual relations with her. It is alleged that the applicant promised to marry the victim, however, he later refused.

3. The learned counsel for the applicant submits that, admittedly, the victim was known to the applicant and she had gone to the hotel room on her own.

4. He submits that even though allegations have been made that the physical relations were established on a false pretext of marriage, however, the WhatsApp chats between the victim and the applicant indicate that the complaint was filed by the victim only when her family came to know about their relationship.

5. He submits that the parties were in a consensual relationship.

6. He further submits that the Aadhar card which the victim gave at the time of taking a room in the hotel indicates that her date of birth is 06.03.2003.

7. The learned Additional Public Prosecutor for the State vehemently opposes the grant of any relief to the applicant. He submits that the Aadhaar card which was given by the complainant to the hotel was found to be forged.

8. He submits that as per the school record of the victim, her date of birth is 06.03.2007. He submits that the victim had stated during her medical examination that the applicant had taken her to a hotel on 02.01.2024 and kept her there till 10.01.2024.

9. The learned counsel for the victim submits that the Aadhaar card which indicated the date of birth of the prosecutrix to be 06.03.2003 was made by the applicant himself in order to get a room in the hotel and the victim was lured into having physical relationship on the false pretext of marriage.

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10. I have heard the learned counsel for the parties and perused the record.

11. It cannot be denied that the victim had herself gone to the hotel room and given her Aadhaar card for the purpose of taking a room.

12. While considering the application for bail, the Court has to consider the nature of the offence, severity of the punishment and *prima facie* involvement of the accused. The Court, at this stage, is not required to enter into the detailed analysis of the evidence to establish beyond the reasonable doubt whether the accused has committed offence. It is essential to remember that bail is not a determination of guilt but a safeguard ensuring the accused's right to liberty pending trial. Moreover, the court should ensure that bail conditions are tailored to address any potential risks while respecting the victim's rights. By upholding these principles, the court can strike a balance between protecting the interests of the victim and safeguarding the rights of the accused.

13. The Court while considering the application for bail in relation to offences under POCSO Act is also required to consider the factors such as age of the victim; age of the accused, that is, the older the accused the more serious the offence; the age difference between the victim and the accused so as to consider the element of perversion; conduct of the accused after the offence; whether it is a case of consensual relationship; etc.

14. It is trite law that the consent of a minor is immaterial. However, it is relevant to note that the applicant has disputed the age of the victim and relied upon an Aadhar card which indicates her date of birth as 06.03.2003, as per which she would have been around 20 years of age at the time of the incident.

15. A bare perusal of the FIR shows that the victim had

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admittedly accompanied the applicant to the hotel voluntarily. The same also clearly reflects that the parties were in a consensual relationship.

16. It is also argued by the applicant that he cannot be responsible for the victim producing an Aadhaar card showing a different age.

17. While the veracity of the school records of the victim and her correct age at the time of the alleged incident would be determined during the trial, at this stage, doubt has been created as to the age of the victim and the possibility of the victim being a major at the time of the incident cannot be ruled out. The same, in the opinion of this Court, would be matter of trial and cannot be presumed at this stage. The Trial Court while deciding the case has to consider the entire material on record, and can definitely look into the circumstances and other evidence put forth by the prosecution while passing the judgment.

18. The applicant has also relied upon certain WhatsApp chats. A perusal of the said chats indicates the complaint was filed after the family of the victim came to know about their relationship. While the veracity of the allegations and defences would be tested during the trial, this Court cannot lose sight of the conflicting narratives provided by the chats.

19. On being pointedly asked, the learned Additional Public Prosecutor for the State submits that although chargesheet has already been filed, the said aspect of exchange of messages between the victim and the applicant has not been investigated.

20. It is not in doubt that a mere testimony of the prosecutrix can be sufficient for the purpose of conviction of the accused in relation to offence under Section 376 of the IPC. The testimony does not require corroboration as long as same inspires

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confidence.

21. It is relevant to note that the allegation in the FIR is that the applicant took the victim to the Oyo Hotel in July, 2023, however, the present FIR was lodged only on 04.02.2024.

22. The Hon'ble Apex Court, in the case of **Meharaj Singh (L/Nk.) v. State of U.P. : (1994) 5 SCC 188**, held as under:

“12. ...Delay in lodging the FIR often results in embellishment, which is a creature of an afterthought. On account of delay, the FIR not only gets bereft of the advantage of spontaneity, danger also creeps in of the introduction of a coloured version or exaggerated story...”

23. The applicant and the victim were, admittedly, in a physical relationship since July, 2023, that is, much prior to FIR. 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.”

24. It is to be seen whether the person who has made the promise to marry was dishonest from the beginning and had no intention of upholding his word even at the time of making such a promise. Mere breach of a promise to marry at a belated stage



after significant time has elapsed cannot be termed as a false promise. In the present case, admittedly, the promise to marry was made more than six months before the registration of the FIR. If the victim was an adult at the time of the incident, whether her consent was vitiated by misconception of fact arising out of the applicant's false promise to marry cannot be established at this stage, and the same would be a matter of trial.

25. It is relevant to note that this Court, by order dated 05.03.2024, had granted interim protection to the applicant. The applicant has since joined investigation.

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 disputed that the police has filed the chargesheet in the present case after completing the investigation. It is not the case of the prosecution that the applicant should not be released on bail since there are certain aspects of investigation pending.

28. 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.

29. The applicant is stated to be 28 years of the age and he has clean antecedents. No purpose would be served by allowing the applicant to be interrogated in custody.

30. However, appropriate conditions ought to be put to allay any apprehension of the applicant fleeing from justice or tampering with the evidence.

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31. In view of the above, it is directed that the applicant, in the event of arrest, be admitted on bail on furnishing a bail bond for a sum of ₹50,000/- with one surety of the like amount, subject to the satisfaction of the learned Trial Court, on the following conditions:

- i. The applicant shall furnish a proof of residence where he shall reside upon his release, which should be at least 5 KM far from the locality where the victim resides, subject to the satisfaction of the concerned IO/SHO;
- ii. The applicant shall join and cooperate in further investigation as and when directed by the concerned IO;
- iii. The applicant shall not change the address without informing the concerned IO/SHO;
- iv. The applicant shall, upon his release, not contact the victim or any other witness associated with the case;
- v. The applicant shall, under no circumstance, leave the country without the permission of the Court;
- vi. The applicant shall, upon his release, give his mobile number to the concerned IO/SHO and shall keep his mobile phone switched on at all times;
- vii. The applicant shall appear before the Court as and when directed.

32. In the event of there being any FIR/DD entry / complaint lodged against the applicant, it would be open to the State to seek redressal by filing an application seeking cancellation of bail.

33. It is clarified that the observations made in the present order are only for the purpose of considering the bail applications and should not influence the outcome of the trial and also not be

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taken as an expression of opinion on the merits of the case.

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

AMIT MAHAJAN, J

JULY 15, 2024
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