



2024:DHC:2751



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

*Reserved on: 01.04.2024
Pronounced on: 05.04.2024*

+ **BAIL APPLN. 924/2024**

SH BHUPENDER

..... Petitioner

Through: Mr. Rajpal Singh, Advocate.

versus

THE STATE GOVT OF NCT DELHI

..... Respondent

Through: Mr. Raghvinder Varma, APP for the
State with SI Priyanka, Police Station
New Usmanpur.

Mr. Uttam Datt, Advocate (Amicus
Curiae), Ms. Sonakshi Singh, Mr.
Kumar Bhaskar and Mr. Aman
Sanjeev Sharma, Advocates.
Prosecutrix in person.

CORAM:

HON'BLE MR. JUSTICE VIKAS MAHAJAN

JUDGMENT

VIKAS MAHAJAN, J.

1. The present petition has been filed under Section 438 read with Section 482 CrPC seeking anticipatory bail in connection with FIR No.0134/2024 under Section 376 IPC registered at PS New Usmanpur.
2. The case of the prosecution is that in March, 2022, the petitioner and the complainant came in contact with each other. Thereafter, the petitioner

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visited the house of the complainant and asked for her hand for marriage, in response to which the family of the complainant agreed and asked the petitioner to get his family to their house as their consent would be required for the purpose of marriage. At this the petitioner asked for some time to persuade his family so that he could get them to the house of the complainant. Thereafter, the petitioner started visiting the residence of the complainant.

3. One day in July, 2023 when none of the family members of the complainant was present at their residence, he established physical relationship with the complainant telling her that he had already spoken to the family of the complainant and soon he will get his family members to her house, as well as, on the pretext of soon marrying the complainant. Thereafter, the petitioner also established physical relationship with the complainant at his Greater Noida flat on the promise of marriage. On one or two occasions, the petitioner also took the complainant to a hotel in Paharganj where he established physical relationship with the complainant on the pretext of marrying her but thereafter refused to marry the complainant. Accordingly, on 27.02.2024, a complaint was made by the complainant which led to the registration of aforesaid FIR on the same day itself.

4. Learned counsel for the petitioner invites the attention of the Court to the FIR, to contend that it is the case of the prosecution itself that the petitioner had met the family of the complainant with an intention to marry her, who had agreed and asked the petitioner to get his parents to their house. In response to this, the petitioner had told them in unequivocal terms that he will persuade his family and will get them to their house.



5. He submits that from the very beginning itself the petitioner had an intention to marry the complainant but the same was subject to approval of his family, as is evident from the FIR. He submits that the relationship between the petitioner and the complainant was consensual and it is only after the family of the petitioner did not agree for the marital alliance between the petitioner and the complainant and the said fact was made known to the complainant and his family, that the present FIR came to be registered.

6. He submits that it is not a case of not fulfilling a false promise but at the best could be termed as 'mere breach of a promise'. He submits that there is a distinction between mere breach of promise and not fulfilling a false promise. In support of his contention, the learned counsel has placed on the decision of the Hon'ble Supreme Court in *Sonu @ Subhash Kumar vs. State of Uttar Pradesh & Anr.: (2021) 18 SCC 517*, as well as, a decision of this Court in *Shane Haider vs. State of NCT of Delhi: Bail Appln.466/2024* (Neutral Citation No.2024: DHC: 1115).

7. He submits that the petitioner is 25 years old who is working with a private company and in case he is sent to jail his entire career will be ruined. He submits that there is no allegation against the present petitioner that he had forcibly established sexual relationship with the complainant. According to the learned counsel the case of the prosecution shows that the complainant was a consenting party as she had willingly accompanied the petitioner to petitioner's flat at Greater Noida, as well as, to the hotel in Paharganj.

8. It is contended that the petitioner has clean antecedents and he is not at a flight risk. He submits that in the event the petitioner is granted the



concession of anticipatory bail, he will join investigation as and when he is called upon by the IO concerned.

9. *Per contra*, learned APP for the State has argued on the lines of the status report.

10. Learned *amicus curiae* who was appointed by the Court contended that the reliance placed by the petitioner on the decision of this court in ***Shane Haider*** (*supra*) is misplaced, inasmuch as, the said case is distinguishable on facts. He submits that in the said case the complainant was aware of the fact that the marriage between the complainant and the petitioner therein was subject to the approval of the mother of the petitioner therein. Further, the petitioner therein was a working woman aged about 25 years whereas the present complainant is 22 years of age. He submits that it is only on the basis of false promise of marriage made by the petitioner that the complainant had repeatedly submitted for physical relationship.

11. I have heard the learned counsel for the petitioner, as well as, the learned APP for the State and have perused the material on record.

12. The gravamen of the allegations made in the FIR is that the petitioner has established physical relationship with the complainant on the false promise of marriage.

13. A perusal of the allegations made in the FIR itself shows that the petitioner had visited the family of the complainant to ask for the complainant's hand. However, when he was asked by the family of the complainant to get his family members to the house of the complainant for the purpose of ascertaining their approval for the marriage, the petitioner told that he will get them soon after persuading them.

14. Thus, from the allegations made in the FIR itself it *prima facie*



appears that the marriage between the petitioner and the complainant was subject to the approval of petitioner's family. Further, in the backdrop of the fact that the petitioner had approached the family of the complainant for the purpose of asking her hand for marriage, *prima facie* there seems to be some substance in the submission of the learned counsel for the petitioner that it cannot be said that the petitioner had no intention to marry the complainant from the inception or that the petitioner had made any false promise of marriage to deceive the complainant.

15. In *Deepak Gulati vs. State of Haryana: (2013) 7 SCC 675*, the Hon'ble Supreme Court observed that there is a distinction between mere breach of promise and not fulfilling false promise. It was further held that an accused can be convicted for rape only if the court reaches a conclusion that the intention of the accused was malafide, and that he had clandestine motive. The court is thus, obligated to examine whether the promise that was made at an early stage was a false promise and whether the consent involved was given after wholly understanding the nature and consequences of sexual indulgence. 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)

16. 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)

17. This Court cannot be unmindful of the fact that the complainant is aged about 22 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 of the petitioner's family, since it is borne out from the FIR itself that the petitioner had clearly told the family of the complainant that he needs to persuade his family to get them to the complainant's house for discussing the marriage alliance between them.

18. This Court in ***Shane Haider*** (*supra*) has already taken a view that whether it is a case of false promise or breach of promise on the part of the petitioner does not require any custodial interrogation as it is a matter to be decided at the stage of trial.

19. It is not the case of the prosecution that the petitioner has any criminal record. On the contrary, the petitioner is stated to be working in a private company and sending him to jail will affect his job prospects.

20. It is also not the case of the prosecution in the status report that the petitioner is at a flight risk or he is likely to threaten the complainant or other witnesses in the event he is enlarged on bail.

21. However, 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.



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22. 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. 25,000/- and a Surety Bond in the like amount subject to the satisfaction of the Arresting Officer/SHO concerned, further subject to the following conditions:-

- (a) Petitioner shall join investigation as and when directed by the I.O concerned.
- (b) Petitioner shall not leave NCT of Delhi without prior permission of the learned Trial Court/Ld. MM concerned.
- (c) Petitioner shall not influence the witnesses in any manner or try to contact the complainant or tamper with the evidence.

23. The petition stands disposed of.

24. 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.

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

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

VIKAS MAHAJAN, J.

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