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

+ **BAIL APPLN. 1414/2024**

VIJAY KUMAR

..... Applicant

Through: Mr. Ravinder Kumar and
Mr. G.S. Sharma,
Advocates.

versus

THE STATE OF NCT OF DELHI

..... Respondent

Through: Mr. Pradeep Gahalot, APP
for the State.

SI Priti, PS Khajori Khas
Mr. Sumeet Shokeen, Mr.
Pawash Piyush, Mr.
Abhimanyu Singh, Mr.
Piyush Bansal, Mr.
Kartikey Anand, Mr.
Ankit Kumar and Mr.
Sunny, Advocates for
Prosecutrix.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

17.05.2024

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1. The present application is filed under Section 438 of the Code of Criminal Procedure, 1973 ('CrPC') seeking grant of pre-arrest bail in FIR No. 224/2024 dated 28.03.2024, registered at Police Station Khajuri Khas, for offences under Sections 376/506 of the Indian Penal Code, 1860 ('IPC').

2. It is the prosecution's case that the applicant had befriended the prosecutrix on Facebook. It is alleged that the applicant falsely represented himself as a bachelor and asked the

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prosecutrix to marry him. It is alleged that the applicant established physical relations with the prosecutrix on the pretext of marriage, over the course of four years. It is alleged that when the prosecutrix asked the applicant about marriage, he asked for more time. Thereafter, the prosecutrix found out that the applicant was already married. On being confronted, the applicant told the prosecutrix that they are just friends and asked her to stay in a live-in relationship with him.

3. It is alleged that the applicant used to take the prosecutrix to a house in Khajuri for establishing physical relations. It is alleged that the applicant had told the prosecutrix that it was his sister-in-law's house. It is alleged that the applicant also took the prosecutrix to Shastri Park to establish sexual relations with her.

4. It is alleged that the applicant and his wife, that is, co-accused Pooja, threatened to kill the prosecutrix after she found out about the applicant's marriage.

5. It is stated that the prosecutrix was 2 months pregnant at the time of registration of FIR. It is also the case of the prosecution that the applicant had gotten the prosecutrix pregnant at an earlier instance but when the prosecutrix asked to marry him, he had made excuses and the prosecutrix had aborted the baby by taking medications.

6. The learned counsel for the applicant submits that the applicant has clean antecedents and is being falsely implicated in the present case.

7. He submits that the allegations in the FIR are vague and the prosecutrix has not mentioned the date or time of the alleged offence. He submits that the prosecutrix has also not mentioned the date when she allegedly came to know about the marriage of



the applicant.

8. He submits that there is an undue delay of three years in registration of the present case. He further submits that the applicant and the prosecutrix were engaging in consensual relations with each other.

9. He submits that the applicant is disputing the allegation that he impregnated the complainant. He submits that there are various WhatsApp chats which show that the complainant was operating a sex racket.

10. *Per contra*, the learned Additional Public Prosecutor for the State vehemently opposes the grant of any relief to the applicant. He submits that the crime alleged against the applicant is heinous in nature.

11. The learned counsel for the complainant submits that she was always made to believe that the applicant had married her.

12. He submits that the Aadhar card of the complainant also names the applicant as her husband. Certain photographs are handed over in Court to show that the complainant was misled as the wife of the applicant.

13. He submits that the applicant also bought a property in joint name with the complainant and the complainant is shown as the wife of the applicant in the Sale Deed of the said property.

14. I have heard the learned counsel for the parties.

15. 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."

16. The allegation made is that the applicant had made physical relations with prosecutrix on the pretext of marriage. It is alleged that the applicant had concealed the fact of his first marriage from the complainant. It is argued on behalf of the applicant that the relation between the parties was consensual.

17. 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.”

18. In the present case, it is argued by the learned counsel for the complainant that the prosecutrix was made to believe that she had married the applicant. Certain photographs, the Sale Deed of the property jointly bought by the parties and the Aadhar Card of the prosecutrix is relied on to endorse the said averment.

19. It is pertinent to note that no such mention of marriage has been made in the FIR. It is alleged in the FIR that the applicant kept making excuses when the prosecutrix asked him to get married. It is also alleged that on finding out about the applicant’s marriage, the prosecutrix questioned him as to how he will marry her then.

20. Although it is not in doubt that that the mere statement of the prosecutrix is sufficient for establishing the offence of rape if the same inspires confidence, however, at this stage, *prima facie*, there seems to be some discrepancy in the stance of the complainant.

21. It is alleged that the parties were in a relationship for



almost four years prior to the registration of the FIR. It is alleged that the FIR was lodged after the complainant found out about the first marriage of the applicant. It is pertinent to note that it is not mentioned as to when the complainant found out about the marriage of the applicant. No date or time of the alleged incident has been mentioned by the prosecutrix either.

22. It is argued on behalf of the applicant that the relationship between the parties was consensual and she was aware of his first marriage since the year 2021 whereby there could have been no promise that the applicant would marry the complainant.

23. Whether the consent of the prosecutrix was vitiated by misconception of fact arising out of promise to marry or if she engaged in a relationship with the applicant while being cognizant of the fact that he is a married man cannot be established at this stage, and the same would be a matter of trial.

24. At the stage of considering bail, it is neither appropriate nor feasible for the court to draw any conclusion, let alone render any finding, as to whether a false promise of marriage was made to the prosecutrix or whether she was aware of the first marriage of the applicant. Such determinations must await a comprehensive assessment and evaluation of evidence to be led by the parties at the trial.

25. 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.

26. False allegations of sexual misconduct and coercion not only tarnish the reputation of the accused but also undermine the credibility of genuine cases. Hence, it is imperative for the Court



to exercise utmost diligence in evaluating the *prima facie* allegations against the accused in each case, especially when issues of consent and intent are contentious.

27. It is not in doubt that the case is at the nascent stage and requires further investigation and the order of grant of bail ought not to be passed so as to allow the accused to use the same as a shield. At the same time, it cannot be denied that a great amount of humiliation and disgrace is attached with the arrest.

28. Further, it is not in dispute that the antecedents of the applicant are clean. The applicant has a wife and minor children to take care of. Subjecting the applicant to custodial interrogation will not serve any useful purpose.

29. The learned APP has expressed no apprehension that the applicant will evade the trial or influence the witnesses. Even otherwise, appropriate conditions can be imposed to allay such apprehensions.

30. 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 concerned SHO, on the following conditions:

- i. The applicant shall join and cooperate with investigation as and when directed by the Investigating Officer;
- ii. The applicant shall not leave the country without the permission of the learned Trial Court;
- iii. The applicant shall not contact the complainant or tamper with the evidence in any manner;
- iv. The applicant shall give his mobile number to the concerned IO/SHO and shall keep his mobile phone



switched on at all times;

- v. The applicant shall provide his residential address to the concerned IO/SHO and shall not change the same without informing the IO/SHO;

31. 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.

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

33. The application is allowed in the aforementioned terms.

AMIT MAHAJAN, J

MAY 17, 2024