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IN THE HIGH COURT OF DELHI AT NEW DELHI

+ BAIL APPLN. 1445/2024

ARVIND SINGH

.....Applicant

Through: Ms. Sneha Dutta, Mr.
Manish Mishra, Mr. Dhruv
Nagpal & Mr. Virat
Aggarwal, Advs.

versus

STATE

.....Respondent

Through: Mr. Naresh Chahar, APP
for the State
SI Rekha Chauhan, PS-
Pandav Nagar
Mr. Om Prakash Vyas &
Mr. Sandeep Jindal, Advs.
for complainant with
complainant in person

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

11.07.2024

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1. The present application is seeking pre-arrest bail in FIR No. 143/2024 dated 19.03.2024, registered at Police Station Pandav Nagar, for offences punishable under Sections 376/380 of the Indian Penal Code, 1860 ('IPC') and Section 4 of the Dowry Prohibition Act, 1961.

2. It is the case of the prosecution that the applicant and the prosecutrix met through Instagram and they began dating after the applicant proposed to the prosecutrix on 22.02.2022. It is alleged that the applicant expressed his intention to marry the prosecutrix and stated that he will inform his mother about the relationship as well. It is alleged that soon after they started dating, the applicant established physical relation several times with the prosecutrix on the pretext of marriage.

3. It is alleged that the applicant and the prosecutrix got engaged on 22.09.2023 with their family's consent and began



living together in Delhi from 19.11.2023. The prosecutrix's mother loaned ₹2 lakhs to the applicant for wedding expenses, which was not repaid by the applicant. It is alleged that in the last week of December, 2023, the prosecutrix received a call from the mother of the applicant wherein she asked whether the prosecutrix could give a dowry of ₹20 lakhs and a four wheeler vehicle.

4. On 07.01.2024, the applicant called off the wedding stating that he had found a newspaper clipping which showed some information about a murder case involving the prosecutrix. It is alleged that the prosecutrix had informed the applicant regarding the same from earlier and he was aware about the prosecutrix's acquittal in the same. After a brief reconciliation on 03.02.2024, the applicant again refused to marry the prosecutrix after Valentine's Day. It is alleged that the applicant forcefully established sexual relations with the prosecutrix on 22.02.2024. He then fled their flat on 23.02.2024 after stealing ₹30,000.

5. The prosecutrix later discovered that she was pregnant and took abortion pills at home after the applicant did not respond to her emails. During investigation, the prosecutrix provided evidence of the relationship, engagement and wedding preparations. She also sent a link/article related to the murder case of her Bua through WhatsApp on 07.01.2024, where the applicant had asked her as to why she had hidden the facts of the case and the prosecutrix had placated him by assuring him that she would show her judgment of acquittal to him.

6. During the course of the investigation, the applicant during his interrogation stated that he was in love with the prosecutrix and had been engaged to her but she had hidden the facts of the murder case of her 'Bua' when she was a CCL. He further stated



that she had not shown him any acquittal order regarding the said case.

7. The applicant and his mother denied all allegations, including demanding dowry from the prosecutrix or taking a loan from the mother of the prosecutrix.

8. The learned Trial Court dismissed the pre-arrest bail application of the applicant *vide* order dated 20.04.2024.

9. The learned counsel for the applicant submits that the applicant has clean antecedents and he has been falsely implicated in the present case with the sole intention to harass the applicant.

10. He submits that it has been alleged in the instant FIR that the applicant committed rape on false promise of marriage. He submits that the applicant had the full intention to marry the prosecutrix which is clear from the conduct of the applicant.

11. He submits that it is the prosecutrix who had concealed a material fact from the applicant.

12. He submits that before getting married, in such a situation, any reasonable person would try to verify the authenticity of the claim of the prosecutrix that she had been acquitted by the Juvenile Board.

13. He submits that no reason has been given as to why the custody of the applicant is required.

14. He submits that the allegation made in the FIR with respect to the demand of dowry by the applicant is false and baseless.

15. *Per contra*, the learned Additional Public Prosecutor for the State vehemently opposes the grant of any relief to the applicant since the offence as alleged against the applicant is serious in nature.



16. He however fairly submits that no further investigation is pending in the present case.

17. The learned counsel for the complainant submits that the Status Report is conspicuously silent about the statement of the prosecutrix's friend who had allegedly provided call recordings where the applicant had admitted that he knew about the involvement of the prosecutrix in a murder case and also the pregnancy of the prosecutrix.

18. He submits that there are statements that support the allegation of the demand of dowry.

19. He further submits that it is erroneously submitted that no further investigation is left in the present case. He submits that even after the filing of the Status Report, the complainant had tendered her statement to explain as to why she had made no mention of the incident dated 22.02.2024 or her pregnancy despite being in touch with the applicant till 04.03.2024.

20. He further submits that the applicant has misused the interim protection provided by this Court. It is alleged that the applicant had sent three persons to the address of the complainant when her mother was alone at the house to issue threats of dire harm if the complainant did not withdraw the case. He submits that a complaint in this regard has been filed by the mother of the victim under Section 200 of the CrPC.

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

22. 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."*

23. 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.

24. It is the case of the prosecution that the applicant and the prosecutrix started dating after they got acquainted on social media. It is alleged that the applicant allegedly established sexual relations with the prosecutrix on the pretext of marriage. Although the parties were engaged, however, the applicant allegedly called off the wedding due to the previous involvement of the prosecutrix in a murder case of her relative. It is alleged that the applicant was already aware of the prosecutrix's acquittal in the same. It is also alleged that the applicant's mother made a dowry demand of ₹20 lakhs and a four wheeler vehicle when the talks of marriage were ongoing between the parties. It is further alleged that the applicant thereafter forcefully established sexual relations with the prosecutrix on 22.02.2024.

25. It is not in doubt that that the mere statement of the prosecutrix is sufficient for establishing the offence of rape under Section 376 of the IPC. The testimony does not require corroboration as long as the same requires confidence.

26. At the outset, it is relevant to note that the FIR was lodged belatedly on 19.03.2024. 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..."

27. It is stated in the FIR that the prosecutrix found she was pregnant in March, 2024 and she aborted the baby by way of medication on 11.03.2024. It is further stated that the applicant refused to take any responsibility whereafter the FIR was lodged.



It is pertinent to note that a particular explanation has been provided for the delay in lodging of the FIR. The incidents of sexual intercourse relate to period between February, 2022 to February, 2024. Even as per the allegation, the applicant after a brief period of conciliation, left the prosecutrix on 23.02.2024 and the FIR was registered on 19.03.2024. The credibility of any explanation for the delay will be seen during the course of the trial, however, the same casts a doubt as to the veracity of the case.

28. The parties were admittedly in a consensual relation for about two years since February, 2022, that is, much prior to the 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 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.”

29. 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.



30. In the present case, admittedly, the promise to marry was made almost two years before registration of FIR. The parties got engaged subsequently and preparations were made for marriage as well. The applicant has contended that the wedding was called off due to him finding a news article about the prosecutrix's previous involvement while the prosecutrix has contested that the applicant was aware about the acquittal of the prosecutrix in the said case.

31. It is not denied that the family members of both the applicant and the prosecutrix tried to mediate and wanted the marriage to take place. Marriage not taking place after the arrangements are made in some circumstances is stigmatic, specially for women. The same, however, cannot be called intentional since some amount of stigma is also involved for the family of the man.

32. Whether the consent of the promise to marry made by the applicant was false at the time when the promise was made cannot be established at this stage, and the same would be a matter of trial.

33. The Status Report indicates that the maternal uncle of the victim was examined who stated in his statement under Section 161 of the CrPC that while a demand of dowry of ₹20 lakhs and a four-wheeler vehicle had been made by the mother of the applicant, however, he did not have any evidence regarding the same. The veracity of the statements tendered by the relatives of the prosecutrix in regard to demand of dowry will be seen during the course of the trial.

34. Insofar as the incident on 22.02.2024 is concerned, it is relevant to note that the Status Report indicates that the prosecutrix was in touch with the applicant till 04.03.2024 but



she never made any mention of the forceful sexual relation and neither informed the applicant of her pregnancy. It is also stated that there is no medical evidence regarding the pregnancy of the victim.

35. It is relevant to note that this Court, by order dated 26.04.2024, had granted interim protection to the applicant. The applicant has since joined investigation.

36. It is not in doubt that an 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, he is cooperating with the Investigating Agency and is not likely to abscond, the custodial interrogation should be avoided.

37. Insofar as the threats received by the mother of the prosecutrix are concerned, it is stated that a complaint in respect of the same has already been filed. At this stage, in the opinion of this Court, bail cannot be denied to the applicant on the allegation that he had attempted to pressurise the prosecutrix to settle the matter in the absence of any cogent link between the applicant with the individuals who threatened the mother of the prosecutrix.

38. Even otherwise, appropriate conditions ought to be imposed to allay any apprehensions of the applicant tampering with the evidence or evading the trial.

39. 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.

40. It is not in dispute that the antecedents of the applicant are clean.



41. In such circumstances, this Court is of the opinion that subjecting the applicant to custodial interrogation will not serve any useful purpose.

42. 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 prosecutrix 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 concerned IO/SHO.

43. 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.

44. The present application is allowed in the aforementioned terms.

AMIT MAHAJAN, J

JULY 11, 2024