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

+ **BAIL APPLN. 2520/2023**

**MOHAMMAD RIYAZ**

..... Applicant

Through: Mr. M.K. Pervez, Mr. J.A.  
Chaudhary, Advs.

versus

**STATE OF DELHI NCT OF DELHI**

..... Respondent

Through: Mr. Utkarsh, APP for the  
State with WSI Damini,  
PS Vikaspuri.

**CORAM:**

**HON'BLE MR. JUSTICE AMIT MAHAJAN**

**ORDER**

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**15.02.2024**

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. 128/2023 dated 20.03.2023, for offences punishable under Sections 376/506 of the Indian Penal Code, 1860 ('IPC'), registered at Police Station Vikaspuri.

2. The FIR was registered on a complaint given by the prosecutrix/ complainant, who is a widow, alleging that the applicant had forcefully established physical relations with her on the false pretext of marriage. It is alleged that the applicant is the son of the prosecutrix's aunt's daughter and he used to visit the prosecutrix at her house, and used to take her out sometimes. It is alleged that the applicant is not living with his wife and he used to ask the complainant to marry him and forced her to have physical relations with him. The prosecutrix alleged that the younger brother of the applicant, namely, Mohd. Afsal did not want her to get married to the applicant and, hence threatened the prosecutrix of dire consequences, if she marries his brother.

3. The learned counsel for the applicant submits that the

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prosecutrix was admittedly in consensual relation with the applicant. He submits that vague allegations have been made that she was forced to have physical relations with the applicant. He further submits that no date or the period has been mentioned when the applicant committed the alleged offence and only general allegations have been made that the applicant forcefully had physical relations on the pretext to marry, several times against her will.

4. The learned counsel submits that the allegations levelled by the prosecutrix against the applicant are because of the property dispute between the families.

5. The learned counsel also pointed out towards the photocopy of the purported settlement agreement executed between the sister of the prosecutrix and brother of the applicant, who is also co-accused in the present FIR. He submits that the co-accused has already been granted pre-arrest bail by the learned Sessions Court by order dated 03.07.2023.

6. He further states that the refusal of the applicant to get married with the prosecutrix cannot be the ground for alleging rape.

7. The learned Additional Public Prosecutor for the State submits that the complaint given by the victim is supported by the statement recorded under Section 164 CrPC. He submits that during the course of investigation, the applicant absconded and has not cooperated with the investigation. He, however, submits that the investigation is almost complete and chargesheet is likely to be filed within a period of two weeks.

8. The applicant, by the order dated 03.10.2023, was granted interim protection by this Court subject to him joining the investigation as and when directed by the Investigating Officer. It

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is not disputed that the applicant has since joined investigation.

9. 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 overimplication 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.”*

10. The applicant has sought the grant of pre-arrest bail on the ground that the FIR in the present case is the result of calling-off of the marriage between the applicant and the prosecutrix. It is



also pointed out that the prosecutrix has also alleged that the brother of the applicant/co-accused had threatened her of dire consequences if she marries the applicant and he has already been enlarged on pre-arrest bail by the learned Trial Court.

11. The prosecutrix, in her statement, has herself stated that the brother of the applicant did not want prosecutrix to get married to the applicant and had threatened her of dire consequences. It is, therefore, not denied that the applicant wanted to marry the prosecutrix.

12. The allegation made is that the applicant had forced the prosecutrix to have physical relations with him on the pretext of marriage. It is relevant to note that no date or time of the alleged incident has been mentioned by the prosecutrix. A bald allegation has been made by the prosecutrix about the physical relations being established by use of force by the applicant.

13. It is apparent that the prosecutrix in the present case, is a grown up lady of 38 years of age, and though, it is not in doubt that mere statement of the prosecutrix is sufficient for establishing the offence of rape if the same inspires confidence, it is also not denied that the prosecutrix had known the applicant and was meeting him on regular basis on her own will.

14. 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."*

15. Whether the consent of the prosecutrix was vitiated by misconception of fact arising out of promise to marry cannot be established at this stage, and the same would be a matter of trial.

16. 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.

17. 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.

18. In the present case there is no cavil that the parties were known to each other and were distant family members. Plainly, failure of a man to live up to the promises would not render a consensual intimate act as rape. It is also obvious that such consent would also be based on account of mutual attraction and not merely because a man promises marriage.

19. It is not disputed that the applicant has joined the investigation. There are no chances of the applicant fleeing from justice or tampering with evidence. The apprehension, even otherwise, can be taken care of by putting appropriate conditions. It is trite law that where the court is of the considered view that



the accused has joined the investigation and he is fully cooperating with the investigating agency and is not likely to abscond, in that event, custodial interrogation should be avoided since, a great ignominy, humiliation and disgrace is attached to arrest. [Ref : *Bhadresh Bipinbhai Sheth v. State of Gujarat* : (2016) 1 SCC 152]

20. In view of the aforesaid settled principles, and the fact that the applicant has been on interim protection, and during this period, there is no allegation of him trying to influence the witnesses or the prosecutrix, this Court considers it apposite that in the event of arrest, the applicant be released on bail on furnishing a personal bail bond for a sum of ₹20,000/- with one surety of the like amount to the satisfaction of the concerned SHO, subject to the following conditions:

- a. The applicant shall join and cooperate with further investigation as and when required by the Investigation Officer (IO);
- b. The applicant shall not contact/intimidate the prosecutrix in any manner;
- c. The applicant shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the Court or to any police officer;
- d. The applicant shall provide his mobile number to the concerned IO and keep it operational all the times, and
- e. The applicant shall in case of change in his residential address, and/or mobile number, intimate the concerned IO.

21. It is clarified that the observations made in the present order are for the purpose of deciding the present pre-arrest bail

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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.

22. The present application is allowed in the aforementioned terms. Pending application also stands disposed of.

**AMIT MAHAJAN, J**

**FEBRUARY 15, 2024**

*UG / KDK*