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

+ BAIL APPLN. 2395/2024, CRL.M.A. 23075/2024,
CRL.M.A. 23076/2024 & CRL.M.A. 25752/2024

AMAN YADAV

.....Petitioner

Through: Mr. Arun Baali, Mr. J.S.
Lamba & Ms. Arisha
Ahmad, Advs.

versus

THE STATE NCT OF DELHI

.....Respondent

Through: Mr. Naresh Kumar
Chahar, APP for the State
with Mr. Karan Khurana,
Mr. Hari Shankar Sharma,
Mr. Ashutosh Kumar &
Mr. Deepak Grover, Advs.
SI Sakshi, PS- Hari Nagar
Mr. Lakshay Kumar, Mr.
Deepak & Mr. Gitesh
Aneja, Advs. for victim
with victim in person

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

30.08.2024

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1. The present application is filed under Section 438 of the Code of Criminal Procedure, 1973 ('CrPC') seeking pre-arrest bail in FIR No. 275/2024 dated 26.06.2024, registered at Police Station Hari Nagar, for offence under Section 376 of the Indian Penal Code, 1860 ('IPC').

2. The FIR in the present case was registered on the complaint of the prosecutrix. It is alleged that the complainant had known the applicant for the last 11 years as they were residing in the same neighbourhood. It is alleged that the

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complainant and the applicant were in a relationship and the applicant, after January, 2021, established physical relations with the complainant several times on the false pretext of marriage. It is alleged that thereafter, when the complainant asked the applicant to marry her, he stopped picking her calls and denied to marry her.

3. The learned counsel for the applicant submits that the applicant has clean antecedents and he has been falsely implicated in the present case.

4. He submits that the applicant and the complainant have admittedly known each other for the last 11 years. He submits that the applicant and the complainant visited numerous places together and any physical relations that developed between the complainant and the applicant were consensual, and there was no element of coercion or pressure.

5. He submits that the present FIR was registered solely to settle personal scores after the relationship between the parties soured due to the ill temperament by the complainant when the applicant tried to break off the relationship.

6. He submits that after the applicant tried to distance himself from the complainant, she had made a call to the police on 09.09.2022 to lodge a complaint against the applicant, however, she had thereafter given a statement to the police on 09.09.2022 withdrawing the same and admitting that she was in a consensual relationship with the applicant.

7. He submits that the applicant has deep roots in the society and he has joined the investigation and is cooperating with the same as well.

8. *Per contra*, the learned counsel for the complainant



vehemently denies all the averments made by the applicant, and opposes the grant of pre-arrest bail on account of the gravity of the offence. He submits that the applicant, on multiple occasions, had established physical relations with complainant on the false pretext of marriage.

9. He submits that the complaint was withdrawn by the complainant in the year 2022 as the applicant's family promised to marry him to her.

10. He further submits that on 22.07.2024, at 6:35 PM, the applicant had approached the complainant in the market and threatened to throw acid on her if she refused to continue their relationship. He submits that the applicant has influential connections and the complainant is scared for her safety. He submits that a complaint in this regard was given on 22.07.2024 to the SHO, Police Station Hari Nagar as well.

11. He submits that the applicant had also misused the concession granted to him and again threatened the complainant of dire consequences. He submits that the complainant had thus requested the SHO, Police Station Hari Nagar to provide her protection.

12. He submits that the applicant had filed certain objectionable photographs of the complainant along with the present application and the applicant had also threatened to disseminate the same on public platforms to defame the complainant.

13. The learned Additional Public Prosecutor ('APP') for the State vehemently opposes the grant of any relief to the applicant and echoes the submissions of the learned counsel for the complainant.



14. He submits that the allegations levelled against the applicant are grave in nature.

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

16. 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.”

17. Therefore, while considering the application seeking pre-arrest bail, the Court has to consider the nature and gravity of the accusations and also has to see whether the accusations have been made within the object of injuring or humiliating the applicant by getting him or her arrested. The Court has to evaluate the material available at that stage and has to strike a balance between the two factors, being, no prejudice is caused to the free, fair and full investigation and prevention of harassment, humiliation and unjustified detention of the accused. At the same time, frivolity of the allegations always has to be considered and in the event of there being some doubt as to genuineness, in the normal course of events, the bail ought to be granted.

18. Undoubtedly, establishing physical relation with a woman by giving a promise in a bad faith and not adhering to it, is a grave accusation. At the same time, it is to be kept in mind that false allegations of sexual misconduct not only tarnish the reputation of the accused, but also undermine the credibility of genuine cases.

19. 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.”

(emphasis supplied)

20. It is an admitted case that the applicant and the prosecutrix had known each other from last almost a decade. It is the case of the prosecutrix herself that they were in a romantic relationship with their own consent. The prosecutrix, in the FIR, alleged that the applicant in the month of January 2021, came to her house and established physical relations on the pretext of marriage. She alleged that after January 2021, the applicant, on a number of occasions, had established physical relations with her by promising marriage. She alleged that the said promise was false.

21. It is relevant to note that the prosecutrix in her statement under Section 164 of the CrPC has herself admitted that she was called to the family functions of the applicant. She has also stated that the applicant’s family members had also repeatedly promised to get her married to the applicant. She has stated that the applicant had given her excuses to not get married when she had asked earlier. She stated that the applicant had last established sexual relations with her forcefully on 22.06.2024 by threatening to make viral her photos and videos. On 23.06.2024, she had gone to meet the applicant, however, his family asked her not to come there again. Further, the applicant switched off his phone.

22. On a bare perusal of the FIR, it is apparent that no such allegations regarding the applicant having forcefully established



physical relations with the complainant were made in the FIR. Moreover, no allegations were made regarding the applicant threatening the complainant with making viral her innocuous photos and videos was made there either.

23. As noted in *Pramod Suryabhan Pawar v. The State of Maharashtra & Anr.* (*supra*), mere breach of promise to marry does not constitute the offence under Section 376 of the CrPC. This Court cannot ignore that the parties were admittedly known to each other for over a decade and enjoyed an amicable relationship for a number of years before the applicant severed the same.

24. The applicant has also placed on record a statement given by the prosecutrix on 09.09.2022 to the SHO, Tilak Nagar. It appears that the prosecutrix had, on an earlier occasion also, given a complaint against the applicant. The statement filed along with the present application has not been denied by the prosecution. The prosecutrix, in the said statement, mentioned that she has been in relationship with the applicant for the last nine years and that she was in depression since the applicant was refusing to marry. She stated that she does not want any legal action against the applicant.

25. It appears that pursuant to the complaint which was given in the year 2022, the applicant and the prosecutrix again were in touch with each other and the present FIR was registered after some acrimony. Strangely, in the FIR, again the incident which allegedly happened in January 2021 was complained, though certain other incidents have been mentioned in the statement under Section 164 of the CrPC.

26. The complaint which led to registration of the FIR, was



admittedly given on 26.06.2024, and refers to an incident which happened in January 2021. There is an inordinate delay in registration of the FIR.

27. 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. From the perusal of the record, the allegations at this stage, do not inspire confidence and the possibility of the intercourse between the parties being consensual, cannot be ruled out. The prosecutrix and the applicant were admittedly, even as per the allegations, in a consensual relationship from the last almost a decade. Even as per the allegations, the prosecutrix and the applicant had known each other's families and at this stage, it appears that they have fallen apart.

28. Whether a promise of marriage was made to the prosecutrix, and whether the said promise was false and made in bad faith by the applicant to induce the consent of the prosecutrix cannot be established at this stage. At the stage of considering bail, it is neither appropriate nor feasible for the court to draw any conclusion, let alone render any finding in this regard either. Such determinations must await a comprehensive assessment and evaluation of evidence to be led by the parties at the trial.

29. 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.



30. It is relevant to note that this Court, by order dated 16.07.2024, had granted interim protection to the applicant. The applicant has since joined investigation. It is stated that the applicant has handed over whatever was asked for by the Investigating Officer, including his laptop. The Status Report indicates that the applicant has joined the investigation. It is stated that the applicant has also handed over his mobile phone to the prosecution and the same has been sent to FSL for expert opinion.

31. Insofar as the threats received by the complainant on 22.07.2024 after grant of interim protection are concerned, the Status Report indicates that when the complainant was asked to show the place where the applicant had threatened her, she talked in circles and left the police station without showing the place. It is stated that she sent the location of the alleged incident on WhatsApp on 23.07.2024, however, no CCTV was found there. Moreover, the applicant had joined the investigation and on enquiry, it was found that he had been at his brother's house on 22.07.2024. The applicant had also provided the CCTV footage evidencing the same. Thus, the said allegation does not merit denial of bail to the applicant. This Court by order dated 05.08.2024 had directed the concerned SHO to sensitise the Investigating Officer to take prompt action as and when any such complaints will be filed by the complainant.

32. The prosecutrix has filed two applications being CRL.M.A. 23076/2024 & CRL.M.A. 25752/2024. It is alleged that the applicant has revealed the prosecutrix's identity in the present matter and has committed an offence under Section 72 of the Bharatiya Nyaya Sanhita, 2023 (**BNS**). Further, prayer has



been sought seeking direction to the Registry to furnish a written explanation regarding the objectionable photographs of the complainant / prosecutrix being made part of the present bail application.

33. This Court, by order dated 16.07.2024, had directed the Registry to take off Annexure P2 from the record of the present case on an objection being raised by the prosecutrix.

34. It is also alleged that the address of the prosecutrix has also been mentioned in the present bail application. In regard to the prayer that an appropriate action be taken under Section 72 of the BNS, admittedly, the prosecutrix has already given a complaint in that regard to the Police. The Police, therefore, would take an appropriate action in accordance with law. This Court, therefore, does not consider it apposite to pass any order at this stage in the applications filed by the prosecutrix.

35. In regard to the grievance that explanation be called from the Registry for permitting the objectionable photographs to be placed on record, as noted above, the photographs have already been directed to be taken off from the record. The Registry is, however, directed to be careful in future and properly scrutinise the applications before allowing the same to be listed before the Court.

36. The prosecutrix is also at liberty to give an appropriate application to the Registry of this Court, pointing out the portions from the present bail application which she feels need to be redacted. This Court does not consider it apposite to pass any further orders in that aspect.

37. 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.

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

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

40. 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:

- a. The applicant shall join and cooperate with investigation as and when directed by the Investigating Officer;
- b. The applicant shall not leave the country without the permission of the learned Trial Court;
- c. The applicant shall not contact the prosecutrix or tamper with the evidence in any manner;
- d. The applicant shall give his mobile number to the concerned IO/SHO and shall keep his mobile phone switched on at all times;
- e. The applicant shall provide his residential address to the concerned IO/SHO and shall not change the same without informing the concerned IO/SHO. The applicant shall not reside within 5 Kms of the residence of the prosecutrix.

41. 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.

42. 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.

43. The application is allowed in the aforementioned terms.

AMIT MAHAJAN, J

AUGUST 30, 2024

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