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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**Date of decision: 12th AUGUST, 2024IN THE MATTER OF:+ **BAIL APPLN. 2415/2024****MOHAN KUMAR**

.....Petitioner

Through: Mr. Biswajit Swain, Mr. Arshad Khan, Ms. Razia Sultana and Mr. Akhil Ganga, Advocates.

versus

STATE(GOVT. OF NCT OF DELHI) & ANR.RespondentsThrough: Mr. Aman Usman, APP for the State
Mr. Aditya Kapoor, Mr. Mayur Singhal, Ms. Bhavya Singh, Ms. Himani Singh, Advocates for R-2.
SI Kiran Dayal, D-2009, PS Moti Nagar**CORAM:****HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD****JUDGMENT (ORAL)**

1. The present application has been filed under Section 483 read with Section 528 of the BNSS for grant of bail in FIR No. 305/2024 dated 31.05.2024, registered at Police Station Moti Nagar for offences punishable under Sections 328/376(2)(n)/508 IPC.

2. The facts, in brief, leading up to the filing of the application are as follows:

- a. The Prosecutrix alleged that she met the Petitioner in October, 2014 at an office in Kirti Nagar where they were working together and became friends. It is stated that after some time the petitioner told the Prosecutrix that he liked her and started pursuing her, but she refused to indulge in a relationship with



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him, stating that they belonged to different castes. However, he kept on pursuing her and told that he had told his family about her and subsequently the Petitioner and Prosecutrix came into a relationship.

- b. On 30.05.2018 Petitioner took the Prosecutrix to a hotel in Noida where he allegedly made her drink forcefully, and then forced himself upon her. The Prosecutrix alleges that the Petitioner took the Prosecutrix to various hotels on many other occasions as well, bookings for which were made by the Petitioner through his HDFC card.
- c. It is alleged by the Prosecutrix that in January 2023, the Petitioner spiked the drink of the Prosecutrix and forced her to indulge in unnatural sex at West Society Club Hotel, Moti Nagar and further the Petitioner, took obscene photos and videos of the Prosecutrix. It is stated that on 17 July 2023, the Prosecutrix went to the Petitioners' house but on her arrival, she got to know that the Petitioner had not discussed anything about their marriage with his parents. It is stated that the Petitioner and the Prosecutrix got into a big fight, and then the Petitioner called the Prosecutrix to West Society Club Hotel, Moti Nagar on 07.08.2023 to resolve things together, wherein he again made false promises of marriage to the Prosecutrix and allegedly forced himself on her.
- d. On 01.02.2024 the Prosecutrix went to PS Subhash Place to file a complaint under Section 376(2)(n), upon intimation of this the Petitioner and his family stated that they will get them married and, on 05.02.2024 they went to Arya Samaj Mandir and got



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married. It is alleged that the Saptapadi ritual wasn't performed. It is stated that only the marriage certificate was made and pictures were clicked. It is alleged that the Petitioner even refused to take the Prosecutrix to his house. The Petitioner stated that this was only to get out of the rape case and threatened the Prosecutrix to circulate her private pictures and videos.

- e. It is stated that a petition for annulment of marriage has been filed.
 - f. An application under Section 156(3) CrPC was filed by the Prosecutrix before the Trial Court and vide Order dated 17.05.2024, the present FIR under Section 328/376(2)(N)/506 IPC was registered at Police Station Moti Nagar on 31.05.2024, and investigation started.
 - g. It is pertinent to mention that the Petitioner was arrested on 12.06.2024 and was subsequently transferred to Judicial Custody on 14.06.2024.
 - h. Material on record indicates that no charge sheet has been filed in the present matter yet.
 - i. On 04.07.2024 the Petitioner filed an application for regular bail before the learned Additional Sessions Judge and the said Application was rejected vide order dated 04.07.2024.
 - j. The Petitioner has, thereafter, approached this Court seeking bail.
3. Notice was issued on 15.07.2024 and Status Report has been filed.
4. The Learned Counsel for the Petitioner contends that the Petitioner is innocent and has been falsely implicated in the present case. It is further



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submitted that the present FIR has been registered as a counterblast to the petition filed by the Petitioner for declaration of the nullity of the marriage between the Petitioner and the Prosecutrix. It is further submitted that the alleged offence was first committed in 2018, as indicated by the FIR, however, the present FIR was registered on 31.05.2024, after a substantial delay which remains unexplained. It is further contended that the Prosecutrix and her parents have not expressed any grievances regarding the alleged offences to the Police between 2018 to 2024. The learned Counsel for the Petitioner further submits that the Petitioner and the prosecutrix formed a friendship and established physical relations with the consent of each other. It is further contended that the Prosecutrix voluntarily accompanied the Petitioner to the hotels, and that any interaction between them was entirely consensual and free of any coercion.

5. *Per contra*, The Learned APP for the State and the Learned Counsel for the Prosecutrix vehemently opposes the bail application of the Petitioner. It is stated that the Petitioner has perpetrated multiple acts of rape on the Prosecutrix from 2018 to 2023, forcibly and under the promise of marriage. The Petitioner is also alleged to have engaged in unnatural sex and has impregnated the Prosecutrix on two occasions. Learned Counsels further contends that the Petitioner is accused of possessing and misusing obscene photographs and videos of the Prosecutrix and he has threatened the Prosecutrix to damage her reputation. It is further contended that they did not perform the essential Saptapadi ritual required for a valid Hindu marriage under the HMA. Instead, the Petitioner allegedly secured a false marriage certificate from Arya Samaj Mandir to avoid the registration of an FIR, because of the Prosecutrix complaints of rape and unnatural sex. It is further contended that after the purported marriage, the Petitioner neither



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took the Prosecutrix to his parental home nor maintained communication with her, which indicates that the marriage was a sham and was performed only to evade legal repercussions. It is further stated that though the Petitioner claims that the marriage was consensual and valid, however, he filed for annulment just one month later, alleging coercion by the Prosecutrix. This contradictory behavior indicates an attempt to manipulate the legal process. It is further stated that the Prosecutrix did not approach any legal body to register the FIR because she was constantly been promised by the Petitioner that he will marry her. Learned Counsels for the State and the Prosecutrix state that the Petitioner is accused of a very serious offence and, therefore, bail ought not to be granted to the Petitioner.

6. Heard Learned Counsels and perused the material on record.

7. The parameters to be considered for grant of bail have been consistently enunciated by the Apex Court. The parameters laid down by the Apex Court are:

- a. nature and gravity of the charge;
- b. severity of the punishment in case of conviction;
- c. reasonable apprehension of witness being influenced;
- d. prima facie or reasonable ground to believe that the accused had committed the offence;
- e. character, behaviour, means, position and standing of the accused;
- f. danger of justice being thwarted by grant of bail.

(Refer: Ram Govind Upadhyay vs. Sudarshan Singh and Others, (2002) 3 SCC 598 and Prasanta Kumar Sarkar vs. Ashis Chatterjee and Another, (2010) 14 SCC 496)



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8. The allegation against the Petitioner is that the Petitioner established physical relationship with the Prosecutrix after promising to marry her. The relationship which has been established between the Petitioner and the Prosecutrix is, therefore, consensual and a question as to whether the consent was given under misconception or not, would be seen in the trial. It is well settled that there is a distinction between a false promise given on the understanding by the maker that it will be broken and a breach of promise which is made in good faith but subsequently not fulfilled (refer: Anurag Soni vs. State of Chhattisgarh, (2019) 13 SCC 1).

9. The Apex Court in Pramod Suryabhan Pawar vs. State of Maharashtra and Another, (2019) 9 SCC 608, has observed as under:

"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."

10. In Deepak Gulati v. State of Haryana, (2013) 7 SCC 675, the Apex Court observed as under:

"21. ... 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



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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.

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.”

11. As per the statement of the Prosecutrix, physical relationship was established between the Petitioner and the Prosecutrix on the basis of promise to marry. Whether the relationship was established with the Prosecutrix after promising marriage or there was no promise to marry at all or whether there was any consent initiated by misconception or concealment of fact arising out of a promise to marry has to be established. It has to be ascertained on facts that the promise to marry must have been a false



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promise given in bad faith with no intention of being adhered to at the time of making promise.

12. The Petitioner and the Prosecutrix were colleagues in office and are old enough to understand things. Material on record indicates that there is a certificate of marriage between the Petitioner and the Prosecutrix issued by the Arya Samaj Mandir. Material on record also indicates that the Petitioner has also moved an application for annulment of marriage. These facts go to the very root of the allegation of false promise to marry made by the Prosecutrix. The other allegations of the Prosecutrix have to be proved in trial for which the custody of the Petitioner is not required.

13. Both the Petitioner and Prosecutrix are working individuals. The Petitioner has roots in the society and, therefore, it cannot be said that the Petitioner would flee from justice. The social status of the Petitioner vis-à-vis, the Prosecutrix is similar, and it cannot be said that the social status of the Petitioner is such which would give a reasonable apprehension in the mind of the court that the Petitioner would be in a position to influence the Prosecutrix or any other witnesses.

14. The petitioner has been in custody since 14.06.2024 and this Court finds that no useful purpose would be served in keeping the petitioner further in custody. This Court, therefore, is inclined to grant bail to the petitioner on the following conditions:

- a) The petitioner shall give a security in the sum of Rs.50,000/- with two sureties, one of them should be the relative of the petitioner, in the like amount to the satisfaction of the Trial Court;
- b) The Memo of Parties shows that the petitioner is residing at H.No.380-81, Street No.1/2, Block-J, Khoda Colony,



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Swaroop Nagar, Delhi. The Petitioner is directed to continue to reside at the same address and in case there is any change in the address of the Petitioner, the Petitioner is directed to intimate the same to the Investigating Officer.

- c) The Petitioner is directed to report to the local police station once in every week, i.e. on every Wednesday at 10:30 AM and the Petitioner shall be released within half an hour after completing the formalities.;
 - d) The Petitioner is directed to give all his mobile numbers to the Investigating Officer and keep them operational at all times;
 - e) The petitioner shall not, directly or indirectly, tamper with evidence or try to influence the witnesses in any manner;
 - f) The Petitioner is directed not to contact the Prosecutrix or any of her family members.
 - g) The petitioner shall attend all the Court proceedings.
 - h) In case it is established that the petitioner has tried to influence the witnesses or tamper with the evidence, the bail granted to the petitioner shall stand cancelled forthwith.
29. The petition is disposed of along with all the pending application(s), if any.
30. Be it noted that this Court has not made any observations on the merits of the case.

SUBRAMONIUM PRASAD, J

AUGUST 12, 2024

Jp/Rahul