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

+ **BAIL APPLN. 2521/2024 & CRL.M.A. 21080/2024**

SHRI NAVANSH SHARMA

.....Petitioner

Through: Mr. Deepak Kanwal, Mr. Hitesh Batra, Mr. Ruchir Batra, Mr. Rajdev Kumar, Mr. Parmesh Bali, Mr. Anoop Khanna, Mr. Manish Saini and Mr. Saurav Vats, Advocates.

versus

STATE OF NCT OF DELHI

.....Respondent

Through: Mr. Tarang Srivastava, APP for the State.

Mr. Vijay Bhaskar Verma, Mr. Santosh Gupta, Mr. Manish Kumar, Ms. Neha Shrivastava and Ms. Chhaya Singh, Advocates for the Complainant.

SI Sakshi, PS Hari Nagar

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

ORDER

12.08.2024

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1. The Petitioner has approached this Court seeking bail in the event of arrest in FIR No. 284/2024 dated 02.07.2024 registered at Police Station Hari Nagar for an offence under Section 376 IPC.

2. The case of the Petitioner is that the Petitioner and the Prosecutrix know each other from school and they developed relationship. It is also stated in the petition that in the month of May, 2024, a complaint was given to Police Station Inderpuri but the parties entered into a settlement and no FIR was registered.



3. Learned Counsel for the Petitioner states that virtually on the same allegations, the present FIR has been registered against the Petitioner. Apprehending arrest, the Petitioner approached the Court of learned Additional Sessions Judge, Tis Hazari, Delhi for grant of anticipatory bail which was rejected by the learned Trial Court *vide* Order dated 10.07.2024. The Petitioner has now approached this Court by filing the present bail application for grant of bail in the event of arrest in the instant FIR.
4. Learned Counsel for the Petitioner states that the Petitioner is a student and his life would be spoiled if he is arrested. He states that the Petitioner and the Prosecutrix knew each other and both of them being adults, it was a consensual relationship between the parties.
5. This matter came up for hearing on 22.07.2024, when this Court issued notice. Status Report has been filed and reply has also been filed on behalf of the Prosecutrix.
6. In the reply, the Prosecutrix has denied the averments made by the Petitioner stating that the Prosecutrix is a victim and relationship was established on the pretext of marriage. It is stated that since the offence which the Petitioner is accused of is a heinous offence, bail ought not to be granted for offences like Section 376 IPC.
7. The learned APP for the State submits that the investigation is nearing completion and the chargesheet will be filed shortly.
8. Heard learned Counsel for the parties and perused the material on record.
9. A reading of the reply does indicate that the Petitioner and the Prosecutrix knew each other at least from the year 2019. The issue as to whether the relationship was established on the promise of marriage or not is



a matter of trial.

10. The Apex Court in in Pramod Suryabhan Pawar v. 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."

11. The parameters for grant of bail has been given by the Apex Court in Prasanta Kumar Sarkar v. Ashis Chatterjee & Anr., 2010 (14) SCC 496, wherein the Apex Court has observed as under:-

"9. We are of the opinion that the impugned order is clearly unsustainable. It is trite that this Court does not, normally, interfere with an order passed by the High Court granting or rejecting bail to the accused. However, it is equally incumbent upon the High Court to exercise its discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in a plethora of decisions of this Court on the point. It is well settled that, among other circumstances, the factors to be borne in mind while considering an application for bail are:

(i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;



(ii) nature and gravity of the accusation;

(iii) severity of the punishment in the event of conviction;

(iv) danger of the accused absconding or fleeing, if released on bail;

(v) character, behaviour, means, position and standing of the accused;

(vi) likelihood of the offence being repeated;

(vii) reasonable apprehension of the witnesses being influenced; and

(viii) danger, of course, of justice being thwarted by grant of bail.

[See State of U.P. v. Amarmani Tripathi [(2005) 8 SCC 21 : 2005 SCC (Cri) 1960 (2)] (SCC p. 31, para 18), Prahlad Singh Bhati v. NCT of Delhi [(2001) 4 SCC 280 : 2001 SCC (Cri) 674] , and Ram Govind Upadhyay v. Sudarshan Singh [(2002) 3 SCC 598 : 2002 SCC (Cri) 688] .]

12. Applying the parameters for grant of bail and the law laid down by the Apex Court in the facts of the present case, though the Petitioner is accused of an offence under Section 376 IPC but looking at the age of the Petitioner, the fact that he is a student, the deleterious effect it can have on his life and future of the Petitioner if he is taken into custody, the fact that the investigation is more or less complete, the position of the witnesses is such that the Petitioner would not be in a position to tamper with the evidence or influence witnesses, the possibility of the Petitioner fleeing



away from justice is remote and the Petitioner and the Prosecutrix know each other for a long time and that there is a possibility that the Trial Court can come to a conclusion that the relationship was consensual, this Court is inclined to grant bail to the Petitioner in the event of arrest in FIR No. 284/2024 dated 02.07.2024 registered at Police Station Hari Nagar for an offence under Section 376 IPC.

13. In case the prosecution is inclined to arrest the Petitioner, the Petitioner shall be released on bail, subject to the Petitioner furnishing a personal bond in the sum of Rs.50,000/- with two sureties in the like amount to the satisfaction of the concerned SHO/IO.

14. The Petitioner is directed not to influence the witnesses or tamper with evidence. The Petitioner is directed to provide his mobile numbers to the Investigating Officer which shall be kept operational at all times.

15. The Petitioner is directed not to contact the Prosecutrix or the family members directly or indirectly.

16. It is made clear that violation of any of the aforesaid conditions would result in cancellation of bail granted to the Petitioner.

17. With these observations, the bail application is disposed of along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

AUGUST 12, 2024

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