



2024:DHC:3478



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% *Date of Decision : 29th April, 2024*+ **BAIL APPLN. 3580/2023****SUNNY ALIAS RAVI KUMAR** Applicant

Through: Mr. Shankar Datt Gahtori,
Mr. Vijay Datt Gahtori,
Mr. Tara Singh Bisht, Mr.
Priyank Kharkwal, Mr.
Subhash Kumar & Mr.
Sameer Gautam, Advs.

versus

STATE OF NCT OF DELHI Respondent

Through: Mr. Mukesh Kumar, APP
for the State along with
Varun Gupta, Adv.
WSI Garima Bhati, PS
Adarsh Nagar.
Adv. Ashutosh Kaushik &
Adv. Naveen Sarswat for
victim along with victim
and father of victim.

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

AMIT MAHAJAN, J. (Oral)

1. The present application is filed under Section 439 of the Code of Criminal Procedure, 1973 ('CrPC') seeking grant of regular bail in FIR No. 255/2023 dated 10.03.2023 registered at Police Station Adarsh Nagar for offences under Sections 376/354D/506 the Indian Penal Code, 1860 ('IPC'). Chargesheet has been filed against the applicant.

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2. It is alleged that the applicant used to stalk the prosecutrix and proclaimed that he loved her. It is alleged that after the prosecutrix rejected the advances of the applicant, the applicant threatened her. It is alleged that on 01.12.2021, the applicant called the prosecutrix at GTB Nagar Metro Station. It is alleged that when the prosecutrix reached to meet him, the applicant threatened suicide due to which the prosecutrix agreed to meet him and have regular conversations with him.

3. It is alleged that in December, 2021, the applicant took the prosecutrix to the house of his friend in Aadarsh Nagar, and forcefully established sexual relations with the her for the first time. It is alleged that the applicant promised to marry the prosecutrix after exiting from there. It is alleged that thereafter, the applicant took the prosecutrix to a Hotel, namely, Welcome Hotel, about 5-6 times, and forced her to have sexual relations with him there.

4. It is alleged that the applicant also took the applicant to Haridwar in April, 2022 for three days and allegedly married the prosecutrix there. It is alleged that the prosecutrix returned to Delhi due to her bad health. It is alleged that the prosecutrix later found out that the applicant was married and had two children. It is alleged that the applicant used to demand gifts from the prosecutrix and she had allegedly given ₹1.5 lakhs in cash, two mobile phones, clothes and two silver rings to the applicant. It is alleged that the applicant used to beat the prosecutrix when she did not pay heed to his demands.

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5. It is alleged that on 07.03.2023, the applicant called the prosecutrix when he was intoxicated and forced her to meet him at the Adarsh Nagar Metro Station. It is alleged that the applicant thereafter took the prosecutrix to the Welcome Hotel and forced her to have unnatural sex and beat her when she refused.

6. The medical examination of the prosecutrix was conducted at BJRM Hospital, Delhi and her statement was also recorded under Section 164 of CrPC. Chargesheet was filed under Section 376/354D/506 of IPC.

7. The learned counsel appearing on behalf of the applicant submits that the present case has been registered against the applicant to harass, humiliate, and torture him, and he has been in judicial custody since 10.03.2023. It is stated that there are material discrepancies in the FIR and the statement of the prosecutrix recorded under Section 164 of CrPC. It is also contended that as clear from the contents of FIR, the relationship between the applicant and the prosecutrix was consensual in nature and had continued for two years.

8. He submits that it is a case of one-sided love and an act of promiscuity on the part of the prosecutrix. It is further submitted that custody of the applicant is not required for the purpose of investigation, there are no chances of the applicant absconding or fleeing from justice, and that the allegations of promise of marriage are absurd and improbable and therefore, the petitioner be granted regular bail. He further submits that there are clear discrepancies between the complaint and statement given under

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Section 164 of the CrPC by the prosecutrix.

9. Lastly, he submits that there is an inordinate delay of more than 1.5 years in the registration of FIR without any explanation since the alleged incident took place in the month of December, 2021 and the FIR was registered in the month of March, 2023, which created suspicion about the allegations made by the prosecutrix.

10. The learned Additional Public Prosecutor for the State while opposing the present bail application, argues that the prosecutrix has supported the case of the prosecution. He states that there is a possibility that the applicant may extend threats to the prosecutrix and her family, and therefore, the bail application be dismissed.

11. I have heard the learned counsel for the parties.

12. While considering the application for bail, the Court has to consider the nature of the offence, severity of the punishment and *prima facie* involvement of the accused. The Court, at this stage, is not required to enter into the detailed analysis of the evidence to establish beyond the reasonable doubt whether the accused has committed offence. It is essential to remember that bail is not a determination of guilt but a safeguard ensuring the accused's right to liberty pending trial. Moreover, the court should ensure that bail conditions are tailored to address any potential risks while respecting the accused's rights. By upholding these principles, the court can strike a balance between protecting the interests of the complainant and safeguarding the rights of the accused.

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13. In the present case, the allegations levelled against the applicant, in a nutshell, are that he had established forceful physical relations with the prosecutrix on multiple occasions on the false pretext of marriage at his friend– Paaji’s house, in Welcome Hotel, Adarsh Nagar and in a hotel at Haridwar over a period of time. It is not denied that the prosecutrix had known the applicant for a long time. The alleged incident is stated to have taken place for the first time in the month of December, 2021, however no complaint was made at the time. Thereafter, the prosecutrix alleges that she succumbed to the entreaties of the accused to have sexual relations with him, on account of the promise to marry, and therefore continued to have sex on several occasions and even then, no complaint was made by her. The prosecutrix further alleged that the accused made forceful relations with her in the month of March, 2023 and subsequently, the FIR was registered on 10.03.2023, that is, almost after fifteen months from the first alleged incident.

14. 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.”

15. It is also 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 the use of force by the applicant.

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16. It is relevant to note that the prosecutrix was a major at the time of the alleged incident. Whether the consent of the prosecutrix was vitiated by a misconception of fact arising out of a promise to marry cannot be established at this stage, and the same would be a matter of trial. The averment of the applicant that discrepancies between the FIR and any subsequent statement under Section 164 CrPC may be a defence which is a matter of trial.

17. At this stage, no evidence has been brought on record to corroborate that the applicant had made any forceful relation with the prosecutrix or that threats were extended by the applicant to viral her photographs and that the applicant had demanded monies or mobile phones from the prosecutrix. It is apparent that the prosecutrix was meeting the applicant for quite some time before the filing of the complaint and wanted to continue their relationship even after knowing the fact that the applicant is a married man. While societal norms dictate that sexual relations should ideally occur within the confines of marriage, no wrongdoing can be attributed if consensual sexual activity occurs between two consenting adults, regardless of their marital status.

18. The contention of the prosecutrix herself is that the accused had established sexual relationship on the false pretext of marriage even after she came to know about the factum of his subsisting marriage. Her decision to continue with the relationship after coming to know about the same, in view of this Court, *prima facie* points towards her consent towards

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maintaining the relationship with the accused despite knowing that he was married.

19. Evidently, the applicant and the prosecutrix were in a relationship for quite some time and enjoyed each other's company. It is also clear that they had been living as such for quite some time together. It is apparent that the prosecutrix had taken a conscious decision after active application of mind to the things that had happened. Her actions at this stage do not suggest passive acquiescence under psychological duress but rather imply tacit consent, devoid of any misconception.

20. 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.

21. The extant position of law as to when a "promise to marry" is a "false promise" or a "breach of promise" is now settled by the Hon'ble Supreme Court in ***Pramod Suryabhan Pawar v. State of Maharashtra : (2019) 9 SCC 608***, wherein the Supreme Court has expounded the same in the following words :

"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."

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(emphasis supplied)

22. However, at the stage of considering bail, it is neither appropriate nor feasible for the court to draw any conclusion, let alone render any finding, as to whether a promise of marriage made to the prosecutrix was false and in bad faith with no intention of being adhered to when it was given. Such determinations must await a comprehensive assessment and evaluation of evidence to be led by the parties at the trial. 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.

23. Further, it is not in dispute that the antecedents of the applicant are clean. The applicant, who is aged about 34 years, is in custody since 10.03.2023 and has a wife and two minor children to take care of. Keeping the applicant in jail will not serve any useful purpose.

24. In view of the above, the applicant is directed to be released on bail on furnishing a personal bond for a sum of ₹25,000/- with two sureties of the like amount, subject to the satisfaction of the learned Trial Court / Duty MM / Link MM, on the following conditions:

- a. The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted



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with the facts of the case or tamper with the evidence of the case, in any manner whatsoever;

b. He shall under no circumstance contact the complainant / other witnesses;

c. The applicant shall under no circumstance travel out of the country without prior permission of the learned trial court;

d. The applicant shall not tamper with evidence nor otherwise indulge in any act or omission that is unlawful or that would prejudice the proceedings in the pending trial;

e. The applicant shall appear before the learned Trial Court as and when directed;

f. The applicant shall neither contact nor interact, whether directly or indirectly, with the prosecutrix or her family, in any manner whatsoever. The petitioner shall also not visit the locality in which the prosecutrix ordinarily resides ;

g. The applicant shall provide the address where he would be residing after his release and shall not change the address without informing the concerned IO/ SHO;

h. The applicant shall, upon his release, give his mobile number to the concerned IO/SHO and shall keep his mobile phone active and switched on at all times.

25. 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.

26. It is clarified that any observations made in the present
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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.

27. The bail application is allowed in the aforementioned terms.

AMIT MAHAJAN, J

APRIL 29, 2024

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