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

+ **BAIL APPLN. 4158/2023**

CHANDER BHAN

..... Petitioner

Through: Mr. Sudarshan Rajan, Mr.
V.S.Sharma, Mr. Hitain Bajaj, Mr.
Mahesh Kumar and Ms. Kritika Gaur,
Advs.

versus

THE STATE OF GOVT. OF NCT OF DELHI Respondent

Through: Mr. Hemant Mehla, APP for State
with SI Arun Kumar along with SI
Chitra, PS-South Rohini

CORAM:

HON'BLE MR. JUSTICE VIKAS MAHAJAN

ORDER

27.02.2024

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1. The present petition has been filed seeking regular bail in connection with FIR No. 67/2023 u/s 376/506 IPC registered at PS-South Rohini.

2. The case of the prosecution is that the prosecutrix and the petitioner were employees of the same company came into contact with each other and developed friendship over a period of time. The relationship continued for about four years and during this period, the prosecutrix agreed to establish sexual relationship with the petitioner as there was a promise to marry on behalf of the petitioner. However, ultimately the petitioner stepped back from his promise and did not marry the prosecutrix which lead to the



registration of aforesaid FIR.

3. Notice was issued in the bail application on 12.12.2023 and the State was directed to file a status report. The status report has been handed over in court today and the same is taken on record.

4. The learned counsel appearing on behalf of the petitioner has also handed over the testimony of prosecutrix, who has been examined as PW1, in court and the same is taken on record. Inviting attention of the court to the testimony of PW1, he submits that the prosecutrix, as well as, the petitioner were in relationship and the talks of marriage were also going on, however, the mother of the petitioner did not approve of the marital alliance of the petitioner with the prosecutrix and that became the reason for petitioner's refusal to marry the prosecutrix.

5. He submits that it is not the case of the prosecutrix that the petitioner never intended to marry the prosecutrix.

6. The learned counsel appearing on behalf of the petitioner places reliance on the decision of "*Prmaod Suryabhan Panwar Vs. State of Maharashtra and Anr. (2019) 9 SCC 608*" and "*Deepak Gulati Vs. State of Haryana (2013) 7 SCC 675*" to contend that there is a difference between mere breach of a promise and not fulfilling a false promise.

7. He submits that the petitioner is in custody since 15.02.2023 and the custody of the petitioner is no more required. Further the testimony of prosecutrix has already been recorded, therefore, there is no possibility of the petitioner influencing the prosecutrix in the event he is enlarged on bail.

8. *Per Contra* the learned APP has argued on the lines of the status report.

9. I have heard the learned counsel for the petitioner as well as learned



APP and have perused the record.

10. A bird's eye view of the testimony of PW1 clearly shows that the prosecutrix and the petitioner were in relationship and the prosecutrix used to talk to the mother of the petitioner. It also appears from the testimony of PW1 that the petitioner was willing to marry the prosecutrix but the refusal came from the mother of the petitioner.

11. In the given circumstances, even presuming the allegations of sexual relationship being established by the petitioner with the prosecutrix on the promise of marriage to be correct, *prima facie* it cannot be said that the petitioner had no intention to marry the petitioner from the very inception or that the petitioner has made false promise of marriage to deceive the prosecutrix.

12. In ***Deepak Gulati (Supra)***, the Supreme Court observed that there is a distinction between mere breach of promise and not fulfilling a false promise. The relevant observations reads as under:-

*“21. Consent may be express or implied, coerced or misguided, obtained willingly or through deceit. Consent is an act of reason, accompanied by deliberation, the mind weighing, as in a balance, the good and evil on each side. **There is a clear distinction between rape and consensual sex and in a case like this, the court must very carefully examine whether the accused had actually wanted to marry the victim, or had mala fide motives, and had made a false promise to this effect only to satisfy his lust, as the latter falls within the ambit of cheating or deception. 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 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. **An accused can be convicted for rape only if the court reaches a conclusion that the intention of the accused was mala fide, and that he had clandestine motive.***”

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*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.”*

(Emphasis supplied)

13. Further, the testimony of the prosecutrix has already been recorded, there is no possibility of the petitioner influencing the prosecutrix in the event he is enlarged on bail. The petitioner also has the clean antecedents. Further, it is not the case of the prosecution that the petitioner is a flight risk or has a criminal record. Therefore, no useful purpose will be served in keeping the petitioner behind the bars, who is stated to be in judicial custody since 15.02.2023.

14. In view of the above, this court is of the opinion that the petitioner has



made out a case for grant of bail. Accordingly, the petitioner is enlarged on bail subject to his furnishing a Personal Bond in the sum of Rs.25,000/- and one Surety Bond of the like amount to the satisfaction of the Trial Court / CMM /Duty Magistrate, further subject to the following conditions:-

- a) Petitioner shall appear before the Court as and when the matter is taken up for hearing.
 - b) Petitioner shall provide all mobile numbers to the IO concerned which shall be kept in working condition at all times and he shall not change the mobile number without prior intimation to the Investigating Officer concerned.
 - c) Petitioner shall not indulge in any criminal activity and shall not communicate with or come in contact with the prosecutrix/witnesses or any family members of the prosecutrix/witnesses.
15. The petition is disposed of.
 16. Copy of the order be forwarded to the concerned Jail Superintendent for necessary compliance.
 17. Order *dasti* under signatures of the Court Master.

VIKAS MAHAJAN, J

FEBRUARY 27, 2024/cd