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

+ **BAIL APPLN. 3589/2024**

SURENDER SINGH

.....Applicant

Through: Mr. Dhananjai Jain and
Mr. Anurag Mishra, Advs.

versus

GOVT. OF N.C.T. OF DELHI

.....Respondent

Through: Mr. Ajay Vikram Singh,
APP for the State with SI
Suruchi, PS Fatehpur Beri,
Delhi along with the
complainant in person.
Mr. Firoj Alam, Mr. Sekh
Amanulla Irfan, Mr.
Rashid Imam and Mr.
Mohd. Mujmil, Advs.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

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28.10.2024

CRL.M.A. 30010/2024 (exemption from filing certified copies of documents / annexures) & CRL.M.A. 30011/2024 (exemption from filing typed copies of dim annexures / documents)

1. Exemptions allowed, subject to all just exceptions.
2. The applications stand disposed of.

**BAIL APPLN. 3589/2024 & CRL.M.A. 30019/2024,
CRL.M.(BAIL) 1659/2024**

3. The present application is filed seeking grant of regular bail in FIR No. 377/2024 dated 23.07.2024, registered at Police Station Fatehpur Beri, for offences under Sections 376/509/506 of the Indian Penal Code, 1860 (IPC).

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4. Briefly stated, the FIR in the present case was registered on a complaint made by the prosecutrix alleging that the prosecutrix and the applicant were in a consensual relationship for the last nine years. She alleged that the applicant established physical relations with her by promising to marry her.

5. It is further alleged that the prosecutrix stayed with the applicant as his wife and also got pregnant. She further claimed that she got pregnant 4 – 5 times in the last nine years, and each time there was a miscarriage and she was not given any medical treatment. The prosecutrix claimed that the applicant subsequently refused to marry her.

6. The learned counsel for the applicant submits that the applicant is innocent and he has clean antecedents. He submits that the applicant has been falsely implicated in the present case in custody since 05.08.2024.

7. He submits that the prosecutrix was an adult and had entered into a consensual relationship with the applicant. He submits that the applicant has been accused of such crime only for the reason of not marrying.

8. *Per contra*, the learned Additional Public Prosecutor for the State vehemently opposes the grant of any relief to the applicant. He submits that the allegations levelled against the applicant are heinous in nature.

9. It is settled law that the Court, while considering the application for grant of bail, has to keep certain factors in mind, such as, whether there is a *prima facie* case or reasonable ground to believe that the accused has committed the offence; the nature and gravity of the accusation; severity of the punishment in the event of conviction; the danger of the accused absconding or



fleeing if released on bail; reasonable apprehension of the witnesses being threatened; etc.

10. As per the case of the prosecution, the applicant and the prosecutrix had been in a consensual relationship since the year 2016. The prosecutrix, during the said period, also got pregnant on a few occasions.

11. As is evident from the above, the prosecutrix was an adult at the time of the alleged incident and had entered into a consensual relationship with the applicant, though she states that this was on the false pretext of marriage. The prosecutrix herself claimed that she was staying with the applicant as his wife.

12. It is suffice to say that the evidence *prima facie* shows a consensual relationship between two adults where promise to marry may have been a motivating factor for sexual relationship, however, whether the same was false since the very beginning cannot be *prima facie* held at this stage.

13. The learned counsel for the complainant also contends that a sum of approximately ₹10,00,000/- was taken by the applicant, which has not been returned.

14. The learned counsel for the applicant submits that the parties were admittedly staying as husband and wife and the money being exchanged between the parties cannot be termed as the amount cheated.

15. Be that as it may, the same would be tested during the course of trial and cannot be commented upon at this stage.

16. The chargesheet has already been filed in the present case.

17. The Hon'ble Apex Court, in ***Lalu Yadav v. State of U.P.*** : **2024 SCC OnLine SC 2876** held as under :

“14. Now, having bestowed our anxious consideration to the decisions referred supra with reference to the factual



situations obtained in the case at hand, we are of the considered view that the High Court has palpably gone wrong in not considering the question whether the allegations in the complaint reveals prima facie case that the complainant had given her consent for the sexual relationship with the appellant under misconception of fact, as alleged, or whether it reveals a case of consensual sex. Firstly, it is to be noted that the subject FIR itself would reveal that there occurred a delay of more than 5 years for registering the FIR; secondly, the very case of the complainant, as revealed from the FIR, would go to show that they lived for a long period as man and wife and thirdly, the facts and circumstances obtained from the subject FIR and other materials on record would reveal absence of a prima facie case that the complainant viz., respondent No. 4 had given her consent for sexual relationship with the appellant under misconception of fact. At any rate, the allegations in the FIR would not constitute a prima facie case of false promise to marry from the inception with a view to establish sexual relationship and instead they would reveal a prima facie case of long consensual physical relationship, during which the complainant addressed the appellant as her husband. Moreover, it is also the case of the complainant, revealed from the subject FIR and the other materials on record that she went along with the appellant to Varanasi with the knowledge of her family and stayed with him in hotels during such visits. The subsequent refusal to marry the complainant would not be sufficient, in view of the facts and circumstances obtained in the case at hand, by any stretch of imagination to draw existence of a prima facie case that the complainant had given consent for the sexual relationship with the appellant under misconception of fact, so as to accuse the appellant guilty of having committed rape within the meaning of Section 375, IPC.”

18. The investigation in the present case already stands concluded. The applicant cannot be made to spend the entire period of trial in custody especially when the trial is likely to take considerable time. In the opinion of this Court, no purpose would be served by keeping the applicant in further custody.

19. The object of jail is to secure the appearance of the accused during the trial. The object is neither punitive nor preventive and the deprivation of liberty has been considered as a



punishment.

20. This Court is of the opinion that the applicant has established a prima facie case for the grant of bail.

21. The applicant is therefore, directed to be released on bail on him 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, on the following conditions:

- i. The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case or tamper with the evidence of the case, in any manner whatsoever;
- ii. The applicant shall under no circumstance leave the country without the permission of the learned Trial Court;
- iii. The applicant shall appear before the learned Trial Court as and when directed;
- iv. 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;
- v. The applicant shall, upon his release, give his mobile number to the concerned IO/SHO and shall keep his mobile phone switched on at all times.

22. 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.



23. 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.

24. The bail application is allowed in the aforementioned terms. Pending applications also stand disposed of.

AMIT MAHAJAN, J

OCTOBER 28, 2024

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