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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **BAIL APPLN. 3639/2024**
NIKKUPetitioner

Through: Ms. Sujata Ray, Mr. Vijeta Raj,
Advocates.

versus

THE STATE NCT OF DELHIRespondent
Through: Mr. Pradeep Gahalot, APP for State
with SI Poonam PS: Janakpuri.
Ms. Gayatri Nandwani, Advocate
(DHCLSC)with Ms. Mudita Sharma
and Mr. Adrian Abbi, Advocates.

CORAM:
HON'BLE MR. JUSTICE ANISH DAYAL

ORDER
26.11.2024

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1. This petition has been filed, seeking regular bail in FIR no. 361/2024, under Sections 376(2) (n) of IPC, registered at P.S. Janakpuri.
2. As per the Nominal Roll, there are no previous involvements of the petitioner.
3. As per the case of the prosecution, the FIR was registered, on the complaint of the complainant, that the petitioner had forcefully established physical relations with her, on the pretext of marriage, on 22nd September 2023 & 23 October 2023, at 'Hotel Laxmi Inn', Janakpuri.
4. She stated that the accused met her in June 2023, during a trip to Vaishno Devi, and they became friends through Instagram. Thereafter, they



made calls to each other. The FIR was registered and investigation ensued. The CCTV footage of 'Hotel Laxmi Inn', Janakpuri, was also procured. The CDR and CAF of the mobiles of the accused, have also been procured and are to be filed as part of the supplementary charge sheet. The mobile phone of the victim has also been seized, and the investigation regarding the Instagram accounts, shall also be filed, through the supplementary charge sheet.

5. Counsel for the petitioner, however, has drawn attention to the Instagram chats, *inter alia* those, dated, 08th September 2023, 20th September 2023, 29th September 2023 and 10th October, 2023.

6. Counsel for the petitioner points out, that perusal of the said chats, would clearly show, that there is an exhortation to establish relations, by the complainant herself, and there are various assertions by the petitioner, stating that he was not interested.

7. Despite the allegation that physical relations were established, forcefully, on 22nd September 2023, there are extensive messages in October, 2023, on various dates, including advances by the complainant herself.

8. The transcript of the chats are not being reproduced to preserve privacy of the parties, however the Court has perused the same.

9. Counsel for the petitioner has submitted, that prosecutrix was regularly provoking the petitioner, to talk to her and remain in touch with her, as is evident from the chats.

10. It is also noted that the FIR was lodged on 07th August 2024, about 11 months later, from the alleged date of the incident.

11. Complainant is present in Court, along with her counsel, Ms. Gayatri Nandwani, nominated on behalf of the DHCLSC. Counsel submits that, the supplementary charge sheet and the FSL report are yet to be filed and the



complainant is yet to be examined and therefore objects to the grant of bail.

12. Counsel for the petitioner has also relied upon various judgments of the Coordinate Benches of this Court, in similar situations, where bail was granted *inter alia* which are recorded in para 11 to 16 of the bail application.

13. Very recently, the Supreme Court, in ***Mahesh Damu Khare v. The State of Maharashtra & Anr.*** 2024 INSC 897, in relation to allegations of rape, in cases involving false promise of marriage, made the following observations:

“22. In our view, if a man is accused of having sexual relationship by making a false promise of marriage and if he is to be held criminally liable, any such physical relationship must be traceable directly to the false promise made and not qualified by other circumstances or consideration. A woman may have reasons to have physical relationship other than the promise of marriage made by the man, such as personal liking for the male partner without insisting upon formal marital ties.

Thus, in a situation where physical relationship is maintained for a prolonged period knowingly by the woman, it cannot be said with certainty that the said physical relationship was purely because of the alleged promise made by the appellant to marry her. Thus, unless it can be shown that the physical relationship was purely because of the promise of marriage, thereby having a direct nexus with the physical relationship without being influenced by any other consideration, it cannot be said that there was vitiating of consent under misconception of fact.

.....

32. It is evident from the large number of cases decided by this Court dealing with similar matters as discussed above that there is a worrying trend that consensual relationships going on for prolonged period, upon turning sour, have been sought to be criminalised by invoking criminal jurisprudence”



(emphasis added)

14. This Court adverts to the decision of a Co-ordinate bench of this Court in, ***Sunny v. State (NCT of Delhi)*** 2024 SCC OnLine Del 3189, where, while granting bail, this Court noted, the submissions regarding one-sided affection towards the accused, on part of the prosecutrix herself, the inordinate delay of 1.5 years in filing of the FIR, as also, her consent being devoid of any misconception. The following paragraphs of the said decision, are instructive in this regard:

“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.

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.

.....

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.

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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.”

(emphasis added)

15. Considering these circumstances, and that the charge sheet has been filed and the matter would take time for recording of testimony and in accounting for the submission by counsel for petitioner, the Court is of the opinion that petitioner is entitled to bail.

16. In light of the above, and that the trial in the matter is likely to take some time, and it would not be prudent to keep the petitioner behind bars for an indefinite period, this Court finds it to be a fit case for grant of bail to the petitioner. Consequently, the petitioner is directed to be released on bail on furnishing a personal bond in the sum of Rs. 25,000/- with one surety of the like amount subject to the satisfaction of the Trial Court, further subject to the following conditions:

- i. Petitioner will not leave the country without prior permission of the Court.
- ii. Petitioner shall provide permanent address to the Trial Court. The petitioner shall intimate the Court by way of an affidavit and to the IO regarding any change in residential address.
- iii. Petitioner shall appear before the Court as and when the matter is taken up for hearing.
- iv. Petitioner shall join investigation as and when called by the IO concerned.



- v. Petitioner shall provide all mobile numbers to the IO concerned which shall be kept in working condition at all times and shall not switch off or change the mobile number without prior intimation to the IO concerned.
 - vi. Petitioner shall not indulge in any criminal activity and shall not communicate with or come in contact with any of the prosecution witnesses, the complainant/victim or any member of the complainant/victim's family or tamper with the evidence of the case.
17. Needless to state, but any observation touching the merits of the case is purely for the purposes of deciding the question of grant of bail and shall not be construed as an expression on merits of the matter.
18. Copy of the order be sent to the Jail Superintendent for information and necessary compliance.
19. Accordingly, the petition is disposed of. Pending applications (if any) are disposed of as infructuous.
20. 'dasti'
21. Order be uploaded on the website of this Court.

ANISH DAYAL, J

NOVEMBER 26, 2024/RK/kp

Click here to check corrigendum, if any