



\$~5

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

+ BAIL APPLN. 3654/2024, CRL.M.A. 30431/2024 &
CRL.M.(BAIL) 1687/2024

RAHUL KUMAR SAFI

.....Petitioner

Through: Mr. Ankur Aggarwal and
Mr. Nitin Sharma,
Advocates.

versus

STATE

.....Respondent

Through: Mr. Naresh Kumar
Chahar, APP for the State
with SI Manisha Sharma,
P.S. Sarai Rohilla.
Counsel for the
prosecutrix (Appearance
not given)

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

22.11.2024

%

1. The present application is filed seeking pre-arrest bail in FIR No. 493/2024 dated 10.09.2024, registered at Police Station Sarai Rohilla, for the offence under Section 376 of the Indian Penal Code, 1860 ('IPC').
2. The brief facts of the case are that the applicant and the prosecutrix were acquainted through common friends. The applicant proposed marriage to the prosecutrix in October, 2021 when he visited her home. Despite her refusal, the applicant forcibly established physical relations with the prosecutrix. It is alleged that between October, 2021 to August, 2024, the applicant continued to coerce the prosecutrix in physical relations on the false promise of marriage.
3. In April, 2024, the prosecutrix found that she was pregnant. It is alleged that the applicant gave some pills to the



prosecutrix which led to her miscarriage. It is also alleged that the applicant exploited the trust of the victim and took ₹4,45,000/- from her. It is alleged that despite his repeated promises, the applicant became involved with some other woman. The applicant also physically assaulted the prosecutrix on 01.09.2024. Non Bailable Warrants were issued against the applicant on 19.09.2024.

4. The learned counsel for the applicant submits that the applicant has clean antecedents and he has been falsely implicated in the present case.

5. He submits that the prosecutrix and the applicant were in a consensual relationship and there are a number of pictures of the parties that show that the prosecutrix was never pressurised by the applicant. He further submits that the relationship between the parties went sour as the prosecutrix used to incessantly call the applicant at work and doubt his character due to the nature of his job as a hair stylist. He submits that the applicant lost his job due to the same.

6. He submits that the allegations are vague and without substance and the present FIR has been registered after an undue delay of around three years.

7. He submits that the applicant was regularly supporting the prosecutrix financially and her bank statement reflects the same as well.

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

9. He further submits the prosecutrix has submitted screenshots of chats and certain video and audio recordings of



conversations between the parties where the applicant had used abusive and disrespectful language. The recorded conversations also allegedly include discussions in relation to a miscarriage.

10. The learned counsel for the prosecutrix also vehemently opposes the grant of any relief to the applicant.

11. I have heard the counsel and perused the material on record.

12. While determining the parameters in granting pre-arrest bail, the Hon'ble Supreme Court in ***Siddharam Satlingappa Mhetre v. State of Maharashtra***, (2011) 1 SCC 694 held as under:

“112.

(i) *The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;*

(ii) *The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a court in respect of any cognizable offence;*

(iii) *The possibility of the applicant to flee from justice;*

(iv) *The possibility of the accused's likelihood to repeat similar or other offences;*

(v) *Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her;* (vi) *Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people;*

(vii) *The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role of the accused in the case. The cases in which the accused is implicated with the help of Sections 34 and 149 of the Penal Code, 1860 the court should consider with even greater care and caution because over implication in the cases is a matter of common knowledge and concern;*

(viii) *While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors, namely, no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused;*



(ix) *The court to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;*

(x) *Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.”*

13. Undoubtedly, establishing physical relation with a woman by giving a promise in a bad faith and not adhering to it, is a grave accusation. At the same time, it is to be kept in mind that 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.

14. It is the case of the prosecution that the applicant forcibly established physical relations with the prosecutrix in October, 2021 after proposing marriage to her. Thereafter, the applicant allegedly continued to establish physical relations with the prosecutrix between October, 2021 to August, 2024 on the false pretext of marriage.

15. It is argued on behalf of the applicant that the relationship between the parties was consensual and the present FIR was registered by the prosecutrix against the applicant after their relationship went sour.

16. The Hon'ble Apex Court in ***Pramod Suryabhan Pawar v. The State of Maharashtra & Anr. : (2019) 9 SCC 608***, has summarised the legal position when a woman complains of sexual intercourse on a false promise of marriage. It was held as under:

“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 supplied)

17. It is an admitted case that the parties were known to each other from the year 2021. The parties continued to be in a relationship till the year 2024. As noted in ***Pramod Suryabhan Pawar v. The State of Maharashtra & Anr.*** (*supra*), mere breach of promise to marry does not constitute the offence under Section 376 of the IPC. This Court cannot ignore that the parties were admittedly known to each other for almost three years and enjoyed an amicable relationship for a number of years before the applicant severed the same.

18. It is not in doubt that that the mere statement of the prosecutrix is sufficient for establishing the offence of rape if the same inspires confidence. However, whether a promise of marriage was made to the prosecutrix, and whether the said promise was false and made in bad faith by the applicant to induce the consent of the prosecutrix cannot be established at this stage. The possibility of the intercourse between the parties being consensual cannot be ruled out.

19. 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 false promise of marriage was made to the prosecutrix. Such determinations must await a comprehensive assessment and evaluation of evidence to be led by the parties at the trial.



20. It is also relevant to note that it is stated in the FIR that the parties continued to engage in sexual relations till August, 2024. It is unclear as to when the prosecutrix found out about the alleged relationship between the applicant and some other woman. The FIR was only registered on 10.09.2024.

21. 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...”

22. While the credibility of any explanation for the delay will be seen during the course of the trial, however, the same casts a doubt as to the veracity of the case.

23. Insofar as the allegation of the applicant having induced the miscarriage of the prosecutrix by giving her some pills is concerned, at this stage, apart from a vague assertion in the status report about some recordings where the parties are discussing the topic, no other material or medical report has been brought forth to substantiate the allegation of the applicant having maliciously induced the miscarriage.

24. It is not in doubt that an order for grant of pre-arrest bail cannot be passed in a routine manner so as to allow the accused to use the same as a shield. The matter in the present case is at the nascent stage. At the same time, it cannot be denied that great amount of humiliation and disgrace is attached with the arrest. In cases where the accused has joined investigation, he is cooperating with the Investigating Agency and is not likely to abscond, the custodial interrogation should be avoided.

25. It is relevant to note that this Court, by order dated



08.10.2024, had granted interim protection to the applicant. It is stated that the applicant has since joined investigation.

26. In such circumstances, this Court is of the opinion that subjecting the applicant to custodial interrogation will not serve any useful purpose.

27. However, appropriate conditions ought to be imposed to allay any apprehensions of the applicant tampering with the evidence or evading the trial.

28. In view of the above, it is directed that the applicant, in the event of arrest, be admitted on bail on furnishing a bail bond for a sum of ₹50,000/- with one surety of the like amount subject to the satisfaction of the concerned SHO, on the following conditions:

- i. The applicant shall join and cooperate with investigation as and when directed by the Investigating Officer;
- ii. The applicant shall not leave the country without the permission of the learned Trial Court;
- iii. The applicant shall not contact the complainant or tamper with the evidence in any manner;
- iv. The applicant shall give his mobile number to the concerned IO/SHO and shall keep his mobile phone switched on at all times;
- v. The applicant shall provide his residential address to the concerned IO/SHO and shall not change the same without informing the IO/SHO.

29. 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.

30. It is clarified that 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.

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

AMIT MAHAJAN, J

NOVEMBER 22, 2024