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

+ **BAIL APPLN. 4526/2024**

VAIBHAV SINGH

.....Petitioner

Through: Mr. Rohit Shukla, Mr. Vivek Kumar Gaurav, Mr. Abhay Solanki, Mr. Aman Dalal, Mr. Sunil and Mr. Pawan Sharma, Advs.

versus

STATE OF NCT OF DELHI

.....Respondent

Through: Mr. Nawal Kishore Jha, APP with ACP Ishan Bhardwaj, Dabri, Insp. Rajpal Singh and WSI Sarita, PS, Uttam Nagar, Delhi.
Mr. Lalit Ajmani and Mr. Shahrukh Khan, Advs. for prosecutrix.

CORAM:

HON'BLE MR. JUSTICE VIKAS MAHAJAN

ORDER

20.12.2024

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1. The present petition has been filed under Section 482 read with Section 528 of BNSS, 2023 seeking anticipatory bail in connection with FIR No.460/2024 under Sections 376/509 IPC and Section 3(2)(v) SC/ST Act [in short 'the Act'] registered at P.S. Uttam Nagar, Delhi.
2. The case of the prosecution is that the complainant met present petitioner through a Dating App on 20.11.2021. They met for the first time at OYO Hotel near Nawada Metro Station, Delhi where the petitioner established sexual relationship with the complainant. The complainant also attended a marriage function of the petitioner's sister and the petitioner had



given her to understand that he will marry her. The petitioner also made complainant meet his family. The family of the petitioner was aware that there was a relationship between the petitioner and the complainant and they had also stated that they will arrange for their marriage. However, recently the petitioner had refused to solemnize marriage with the complainant stating that she belongs to lower caste and also humiliated her on account of her caste. The complaint thus, made by the complainant, culminated into aforesaid FIR.

3. Mr. Rohit Shukla, the learned counsel appearing on behalf of the petitioner submits that the present case is a result of failure of consensual relationship of over three years. When the relationship turned sour, the prosecutrix made a complaint making false allegations. He also refers to the screen shots of the WhatsApp chats between the petitioner and the complainant to contend that conversation between them shows that it was consensual relationship and there is no promise of marriage made by the petitioner.

4. He submits that *prima facie* the offence under Section 3(2)(v) SC/ST Act is not made out, therefore, the bar on grant of anticipatory bail under section 18 of the said Act is not attracted, whereas the learned Additional Sessions Judge has held to the contrary.

5. He submits the petitioner is a young boy of 27 years and sending him to custody would affect his future prospects. He submits that the petitioner had joined investigation twice on 17.10.2024 and 18.10.2024. Even after this Court had granted protection to the present petitioner, he again joined the investigation thrice.

6. He further submits that the petitioner has already handed over his



mobile phone to the IO concerned during the course of investigation. The petitioner has clean antecedents and there is no other case registered against him. He, therefore, urges the Court that the petitioner may be granted anticipatory bail.

7. On the other hand, the learned counsel appearing on behalf of the complainant submits that reading of the FIR itself shows that the relationship between the petitioner and complainant broke only because of the caste of the complainant. He submits that there are chats between the present petitioner and the complainant which also show that the complainant has been ridiculed because of her caste.

8. He further submits that the very fact that the FIR was registered by the police after much effort made by the complainant itself goes to show that in case the present petitioner is granted anticipatory bail, he may hamper the investigation. He, therefore, submits that the present bail application may be dismissed.

9. Mr. Nawal Kishore Jha, learned APP appearing on behalf of the State has argued on the lines of the status report.

10. I have heard learned counsel appearing on behalf of the petitioner, learned APP for the State, as well as, learned counsel appearing on behalf of the complainant.

11. A perusal of the Status Report shows that the prosecutrix in her statement recorded under Section 164 CrPC has admitted the fact that she met the petitioner through Dating App in the year 2021 and they were in relationship for the last three years. They made physical relation for the first time at Super OYO Hotel, Near Nawada Metro Station and thereafter their relationship continued and they made physical relation at different hotels. It



is also stated that the petitioner had proposed the complainant for marriage but later when the petitioner asked about her caste and past relationships, then on confession of the prosecutrix, he became aggressive and forcefully made relations with her. It is further stated that since 28.07.2024, he has been denying to marry her as she belongs to SC caste/category.

12. From the reading of Status Report, it appears that the relationship between the petitioner and the complainant was for a long period of almost three years and the complainant had been accompanying the petitioner to various hotels voluntarily without any objection or resistance, which *prima facie* gives an impression that the relationship between the petitioner and the complainant was consensual.

13. The question whether the petitioner had made a false promise to marry the complainant, is a matter to be decided at the stage of trial which does not require any custodial interrogation.

14. In the Status Report it has been mentioned that since 28.07.2024 the petitioner had been refusing to marry the complainant as she belongs to SC category. In the WhatsApp chats there is reference to the fact that the petitioner belongs to Rajput caste and the complainant belongs to SC case. However, in the Status Report there is no whisper that any caste related remarks have been made against the complainant to ridicule her. The complainant has not alleged in her complaint that she was sexually victimised by reason of her caste status during her relationship with the accused. On the contrary, the allegations considered in entirety gives an impression that throughout the relationship was consensual.

15. At this stage it is also apposite to refer to section 3(2)(v) of the Act, which reads as under:



“3. Punishments for offences atrocities.—

xxx xxx xxx xxx
(2) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe,—

xxx xxx xxx xxx
(v) commits any offence under the Indian Penal Code (45 of 1860) punishable with imprisonment for a term of ten years or more against a person or property [knowing that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member], shall be punishable with imprisonment for life and with fine”

16. Section 3(2)(v) of the SC/ST Act is not attracted in the absence of accused’s knowledge that the victim belonged to the SC community. There is no allegation in the complaint/FIR that the accused had prior knowledge about her caste status during three years of their relationship when false promise of marriage is said to have been made. Merely because the complainant belongs to SC community, the provisions of SC/ST Act would not be attracted in a case.¹

17. Further, in case the petitioner refused to marry the complainant citing the reason that they both belonged to the different castes, *prima facie*, that by itself cannot constitute an offence under section 3(2)(v) of the SC/ST Act.

18. The learned ASJ dismissed the anticipatory bail of the petitioner solely on the ground that in view of Section 18 of the SC/ST Act, the application is not maintainable. The learned Judge did not consider whether or not the *prima facie* case is made out under the Act.

19. The law is well settled that an accusation which does not disclose the necessary ingredients of the offence under the SC/ST Act on a *prima facie*

¹ Ramdas and Ors. vs. State of Maharashtra (2007) 2 SCC 170



reading cannot be said to be sufficient to bring into operation the bar envisaged by Section 18 of the SC/ST Act.²

20. In the above factual and legal backdrop, this court is of the view that *prima facie* the ingredients of the offence under section 3(2)(v) of the Act are lacking. Thus, it cannot be said that Section 18 of the Act will come into operation in the present case. For the sake of completeness, it may also be stated that the said offence under the Act was also added subsequently.

21. It is also not the case of the prosecution that the petitioner has any criminal record. Further, it is not alleged in the Status Report that the petitioner is a flight risk or he is likely to threaten the complainant or other witnesses in the event he is granted concession of anticipatory bail. However, an apprehension expressed by the learned counsel for the complainant in this regard can be allayed by imposing appropriate conditions on the petitioner.

22. Having regard to the facts and circumstances of the case, this Court is of the opinion that the petitioner is entitled to the concession of anticipatory bail. Accordingly, it is directed that in the event of petitioner's arrest, he may be released on bail subject to his furnishing a Personal Bond in the sum of Rs. 20,000/- and a Surety Bond in the like amount subject to the satisfaction of the Arresting Officer/SHO concerned, further subject to the following conditions:

- (a) Petitioner shall join investigation as and when directed by the I.O concerned.
- (b) Petitioner shall not influence the witnesses in any manner or try to contact the complainant or tamper with the evidence.

² Shajan Skaria vs. State of Kerala & Anr.; (2024) SCC OnLine SC 2249



23. The petition stands disposed of.
24. It is clarified that the observations made herein above are only for the limited purpose of deciding the present bail application and the same shall not be construed as an expression of opinion on the merits of the case
25. Order *dasti* under signatures of the Court Master.
26. Order be uploaded on the website of this Court.

VIKAS MAHAJAN, J

DECEMBER 20, 2024

Aj/dss