

Ajay

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL BAIL APPLICATION NO. 4068 OF 2024

Joel Ronald Sequeira

.. Applicant

Versus

The State of Maharashtra and Anr.

.. Respondents

-
- Ms. Aruna Pai a/w. Mr. N.M. Nadar, Advocates for Applicant.
 - Mr. Yogesh Dabke, APP for Respondent No.1 – State.
 - Ms. Valentina Sampson a/w. Mr. Kush Agarwal i./by MZM Legal LLP for Respondent No.2.
-

CORAM : MILIND N. JADHAV, J.

DATE : MAY 05, 2025.

P.C.:

1. Heard Ms. Pai, learned Advocate for Applicant; Mr. Dabke, learned APP for Respondent No.1– State and Ms. Sampson, learned Advocate for Respondent No.2 – prosecutrix.

2. This is an Application under Section 439 of the Code of Criminal Procedure, 1973 seeking Regular Bail in connection with C.R. No.560 of 2024 registered with Bandra Police Station under Section 376, 376(2)(n), 377, 328, 342, 109, 354, 506 readwith 34 of the Indian Penal Code, 1860. There are total 2 accused in the matter. Applicant is arraigned as Accused No.1 and is incarcerated since 12.04.2024 i.e. 1 year and 24 days. Accused No.2 is his sister and she has been granted Anticipatory Bail by the Supreme Court.

3. Briefly stated prosecution case is that Accused Nos.1 and 2 befriended First Informant for the first time on 18.11.2023 at Andrew's Church football ground where both accused persons had put up a muffins-cake stall. It is stated that friendship between First Informant and Accused No.2 grew to such an extent that First Informant supported the venture and activities of Accused No.1 and they became good friends and at that time she also started interacting with Accused No.1. It is stated that on 26.12.2023 she visited their house namely Flat No.1 and 2 situated at ground floor in Milbert Lodge Building, Bandra to greet them for Christmas and thereafter at the request and insistence of Accused No.2, agreed to move in their house on rental basis to support them financially. Other reasons why prosecutrix moved in with them was because she would have no issue relating to food, that they had a good wi-fi connection and a large house to accommodate her. First Informant and Accused No.2 agreed on terms and conditions of stay and on 09.01.2024 she paid Accused No.2 Rs.50,000/- in cash towards rent of 3 months after which she moved in the said house.

3.1. Thereafter First Informant has stated that Accused No.2 used to occasionally seek her company and invite her for drinking wine, but after she consumed wine, her head used to feel heavy and she used to fall in deep sleep without understanding anything. It is alleged that when she woke up, she used to have certain blue and black marks on

her body about which she was clueless initially, but on 25.01.2024 she read the personal dairy of Accused No.2 and gathered that Accused No.2 had an interest in girls. Thereafter it is stated that on 02.02.2024 Accused No.2 approached her and told her that she had a back-ache and therefore she wanted to sleep on a hard surface bed in her bedroom and in lieu thereof she persuaded First Informant to either sleep on the couch or inside the bedroom of her brother – Accused No.1 alongwith him. First Informant has stated that she agreed to the latter option and on her own volition went to sleep with Accused No.1 in good faith and thereafter she became close to him and they watched a web series together and exchanged profanity with each other, Accused No.1 expressed his love for her and in response she told him about nurturing a serious relationship and getting married, to which Accused No.1 replied that he was not ready and sought time of 1 to 2 years considering his financial condition.

3.2. Thereafter it is alleged that on 03.02.2024 and 04.02.2024, Accused No.1 established physical relationship with First Informant against her wish and committed unnatural overt acts with her. First Informant has alleged that on 11.02.2024 she accompanied Accused Nos.1 and 2 to celebrate their father's birthday at his place and consumed drinks over there, after which they returned home and at 12 in the night Accused No.2 forced her to drink wine with her after which she fell deep asleep and woke up the next morning and once

again saw black and blue marks on her body. Thereafter it is alleged that on the following day, Accused No.2 showed some compromising photo of First Informant with Accused No.1 and threatened her to break her relationship with Accused No.1 failing which she would viral the said photo. This is the sum and substance of the prosecution case against both accused persons.

4. Accused No.2 has been released on Anticipatory Bail by the Supreme Court. Accused No.1 is incarcerated in prison for the past more than 1 year and has prayed for grant of bail to the Court.

5. Ms. Pai, learned Advocate for Applicant would submit that Applicant is falsely implicated in the present criminal case as First Informant's statement on the face of record is untrustworthy because she herself has admitted that that she was in a love relationship with the Applicant. She would submit that contents of the NCR dated 20.02.2024 filed against Applicant's sister i.e. Accused No.2 appended at page No.210 of Application and contents of the e-mail dated 21.03.2024 addressed to Applicant by Mr. G. Thakkar on behalf of prosecutrix appended at page No.212 of Application are contrary to the statement given by First Informant in the FIR. She would submit that independent witness namely Kunal Acchpiliya whose statement is recorded by prosecution and strongly relied upon is also not reliable and trustworthy as he being the landlord has enmity and acrimonious

relations with Applicant. She would submit that from perusal of material on record it is clear that relationship between Applicant and First Informant was consensual in nature and there is no element of force or violence involved and hence further incarceration of Applicant in such *prima facie* facts is unwarranted.

5.1. She would submit that arrest of Applicant is illegal as grounds of his arrest were not even informed to him nor are stated in column No.8 of his arrest form. She would submit that there are no antecedents to the discredit of Applicant. She would submit that in any event investigation is completed and charge-sheet is filed and possibility of trial commencing / concluding in the near foreseeable future is very bleak. Hence she would urge the Court to enlarge the Applicant on bail.

6. Ms. Sampson, learned Advocate for Respondent No.2 has vehemently opposed the Bail Application of Applicant and would submit that the offence committed by Applicant and his sister is extremely grave and serious. She would submit that Applicant and his sister wrongfully confined First Informant in their residence and subjected her to blackmail by displaying and threatening to viral her private photographs and coerced her with threats of further dissemination. She would submit that First Informant reposed immense trust in the Applicant and his sister (Accused No.2) which has

been eroded by them by committing gruesome acts. She would submit that in so far as consensual nature of the relationship and acts is concerned, though prosecutrix had confessed her intention of nurturing a serious relationship with Applicant that cannot be masked as her consent for consensual physical relationship as she was subjected to the overt acts in an intoxicated condition and they were without her consent.

6.1. She would submit that releasing Applicant on bail would severely hamper the trial as First Informant has been constantly receiving threats to withdraw the subject NCR on 17.07.2024 as well as the FIR dated 07.08.2024. She would submit that mere fact of Applicant being in custody for an extended period would not entitle him for grant of bail as gravity of offence in the present matter needs to be taken into consideration. She would submit that statement of eye-witness Kunal Acchpiliya cannot be ignored by Court as he is a key eye-witness who has seen Accused No.2 forcing First Informant to consume wine and thereafter dragging her inside Applicant's bedroom. She would submit that medical evidence of First Informant corroborates with prosecution case which also may be taken note of by Court. She would plead to the Court that in view of serious facts in the present case Court should reject Bail Application of Applicant and pass directions to expedite the trial in a time-bound manner.

7. Mr. Dabke, learned APP for Respondent No.1 – State would adopt and support the submissions advanced by Ms. Sampson and in addition thereto would submit that there is sufficient *prima facie* material on record to prove complicity of Applicant in the crime. He would submit that in serious matters like rape, murder, etc. Court should be cautious while adjudicating Bail Application as there is a possibility of the Applicant / Accused person may threaten witnesses / prosecutrix which has been done by Applicant's relatives in the present case as is evident from the record. He would submit that Accused No.2 i.e. sister of Applicant who has been granted anticipatory bail by Supreme Court is not co-operating in the trial as she is not remaining present before trial Court for framing of charge on the scheduled dates of hearing and if the present Applicant is released on bail by Court then there is every possibility that even he will not extend any cooperation in the trial. Hence he would urge the Court to reject the Bail Application and pass appropriate directions for expeditious culmination of trial in a time bound manner while keeping the Applicant behind bars.

8. I have heard the learned Advocates for the respective parties at length and with their able assistance perused the record of the case. Submissions made by the learned Advocates have received due consideration of the Court.

9. *Prima facie* is seen that First Informant is a teacher by profession and she is 35 years old. Applicant – Accused No.1 is 29 years old. According to her own statement in the FIR, she on her own volition volunteered to go and sleep inside the bedroom of Applicant - Accused No.1 and continued doing so and also expressed her willingness to be in a serious relationship with him and therefore the allegation of the First Informant in the FIR *prima facie* stands diluted. The fact that she had a consensual relationship with Applicant is not denied by her which is evident from her own statement.

10. Moreover, to keep physical relationship or not is a choice of both the parties. *Prima facie*, it does not appear from the record that the prosecutrix was either forced to keep sexual relationship or really induced to such an extent that she had no other option but to keep physical relationship with Applicant / Accused. Prosecutrix is an educated girl and it shows that it was her conscious decision to keep sexual relations with Applicant. *Prima facie*, at this stage, possibility of noncommittal, consensual relationship cannot be denied.

11. The medical report in this regard *qua* accusation against Applicant is *prima facie* inconclusive. FIR is filed on 12.04.2024 and this *prima facie* delay in the present case is palpable in the alleged facts of the present case.

12. Case of prosecution is based on alleged eye witness account of one Mr. Kunal Acchpiliya who is the landlord of the building in which the residence/flat is situated. His statement is appended at page No.59 and prosecution as well as the first informant has heavily relied on the said statement. He has stated that on 10.02.2024 at about 7:00 p.m. he saw Accused No.1 and First Informant getting close to each other and First Informant resisting advances of Accused No.1. Thereafter he has stated that on 11.02.2024 at 12 in the midnight he was standing near the compound gate of the building and through the open door of the balcony of the said flat, he saw Accused No.2 administering a drink to First Informant and First Informant being intoxicated got unconscious after which she was dragged to the bedroom by Accused No.2. Implication of these two statements heavily argued by prosecution to submit that the landlord is an eye witness to the alleged offence under Sections 376 and 377. I have perused the statement of the landlord. There is nothing more than what is stated hereinabove in the statement. Prosecution is also relying upon other witness statements which in my *prima facie* opinion are hearsay and cannot be effectively relied upon at this stage without trial.

13. *Prima facie* there appears to be several contours to the present case which is emanating from the statements which are recorded. At the stage of bail, I need not delve into the same. First Informant is a lady aged 35 years old. She got acquainted with

Accused No.1 and on her own volition agreed to have slept alongwith him in Accused No.1's bedroom after he expressed his affinity and love for her even as per own statement. *Prima facie* physical intimacy between Accused No.1 and First Informant is clearly seen in the facts of the present case over a period of time. It is also First Informant's case that she herself wanted a serious relationship which she discussed but Accused No.1 wanted more time to commit himself. First Informant is a well educated women who is a teacher by profession and will undoubtedly know the import of her actions as stated in the FIR. The case of sexual exploitation by both accused persons undoubtedly would be a matter of trial. *Prima facie* it appears that after First Informant moved in with accused persons, Accused No.2 may not have probably approved of her relationship with Accused No.1 – her younger brother. In so far as relationship between Accused No.1 and First Informant is concerned *prima facie* it appears to be consensual on reading the statement of First Informant which is recorded by prosecution. It clearly appears to be a case of relationship turned sour on the face of record. Regarding reliance on the eye-witness statement of the landlord, I am of the opinion that nothing much comes out of it so as to interpret it to allege commission of any crime at this stage. Rather the argument of the prosecution *prima facie* to interpret the said statement of landlord is pre-posterous. Prosecution can prove its alleged interpretation at trial on evidence.

14. Regarding apprehension expressed by prosecutrix about threats received, the same can be dealt with by imposing appropriate conditions. The request made by the Prosecution and the Prosecutrix for expeditious trial in a time bound manner is rejected out-rightly as no such direction is warranted considering the immense work load on the trial Court which is seen day in and day out by this Court. Neither the facts in the present case do warrant such directions to be given to the trial Court.

15. In this regard and in the facts of the present case, the Supreme Court in the case of *Mahesh Damu Khare Vs. The State of Maharashtra and Ors.*¹ deciphered the provisions of Section 375 and Section 90 of the IPC in somewhat identical facts where there was a complaint filed about a promise by the Accused person that he would marry the prosecutrix and therefore she consented to have physical relationship with him on the misconception of the fact that he would marry her because of the promise made by him and while doing so in paragraph Nos.18 to 24 the Supreme Court held as under:-

“18. It is the case of the complainant that the Appellant had engaged in sexual intercourse without her consent. She mentioned that there was a promise made by the Appellant that he would be marrying her. Thus, the contention of the complainant was that she consented to have physical relationship with the Appellant on the misconception of fact that he would marry her because of the promise made by the Appellant that he would ultimately marry her.

19. Section 375 of the Indian Penal Code clearly postulates that a person is said to have committed rape if he performs any

¹ 2024 (4) MLJ (Cri) 578

of the sexual acts mentioned Under Sub-clauses (a), (b), (c) and (d) without the consent of the woman. As mentioned above, in terms of Section 90 of the Indian Penal Code, if the consent is given under a misconception of fact, such a consent is no consent in the eyes of law and cannot be considered to be wilful and voluntary consent.

20. Keeping this aspect in mind as to what amounts to consent with reference to Section 375 of the Indian Penal Code, this Court has examined and considered in a number of cases that if the person acts with an active understanding of the circumstances, actions and consequences of the act, it would indicate the presence of consent. It was observed in the case of *Shambhu Kharwar v. State of Uttar Pradesh* and *Anr.* MANU/SC/1011/2022 : 2022:INSC:827 as follows:

11. In ***Pramod Suryabhan Pawar v. State of Maharashtra*** MANU/SC/1142/2019 : 2019:INSC:939 : (2019) 9 SCC 608, a two Judge Bench of this Court of which one of us was a part (D.Y. Chandrachud J.), held in ***Sonu @ Subhash Kumar v. State of Uttar Pradesh*** (2021) 18 SCC 517, observed that:

12. This Court has repeatedly held that consent with respect to Section 375 of the Indian Penal Code involves an active understanding of the circumstances, actions and consequences of the proposed act. An individual who makes a reasoned choice to act after evaluating various alternative actions (or inaction) as well as the various possible consequences flowing from such action or inaction, consents to such action...

[...]

14. [...] Specifically in the context of a promise to marry, this Court has observed that there is a distinction between a false promise given on the understanding by the maker that it will be broken, and the breach of a promise which is made in good faith but subsequently not fulfilled...

[...]

16. Where the promise to marry is false and the intention of the maker at the time of making the promise itself was not to abide by it but to deceive the woman to convince her to engage in sexual relations, there is a "misconception of fact" that vitiates the woman's "consent". On the other hand, a breach of a promise cannot be said to be a false promise. To establish a false promise, the maker of the promise should have had no intention of upholding his word at the time of giving it. **The "consent" of a woman Under Section 375 is vitiated**

on the ground of a "misconception of fact" where such misconception was the basis for her choosing to engage in the said act...

[...]

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)

21. The complainant had taken the plea that the Appellant had physical relationship with her against her consent by making a false promise that he would marry her. In this regard, it has to be considered whether making a false promise to marry amounts to an offence. If a false promise of marriage is made to a woman by a man, thus deceiving the woman leading her to engage in sexual relations, it may amount to misconception of fact, in which case the consent given by the woman may be vitiated. In this regard one may refer to the decision of this Court in *Niam Ahmed v. State* (NCT of Delhi) MANU/SC/0080/2023 : 2023:INSC:85,

20. The bone of contention raised on behalf of the Respondents is that the prosecutrix had given her consent for sexual relationship under the misconception of fact, as the Accused had given a false promise to marry her and subsequently he did not marry, and therefore such consent was no consent in the eye of law and the case fell under the Clause - Secondly of Section 375 Indian Penal Code. In this regard, it is pertinent to note that there is a difference between giving a false promise and committing breach of promise by the Accused. In case of false promise, the Accused right from the beginning would not have any intention to marry the prosecutrix and would have cheated or deceived the prosecutrix by giving a false promise to marry her only with a view to satisfy his lust, whereas in case of breach of promise, one cannot deny a possibility that the Accused might have given a promise with all seriousness to marry her, and subsequently might have encountered certain circumstances unforeseen by him or the circumstances beyond his control, which prevented him to fulfill his promise. So, it would be a folly to treat each breach of promise to marry as a false promise and to prosecute a person for the offence Under

Section 376.

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 vitiation of consent under misconception of fact.

23. It must also be clear that for a promise to be a false promise to amount to misconception of fact within the meaning of Section 90 of Indian Penal Code, it must have been made from the very beginning with an intention to deceive the woman to persuade her to have a physical relationship. Therefore, if it is established that such consent was given under a misconception of fact, the said consent is vitiated and not a valid consent. In this regard we may refer to the case of "Deepak Gulati v. State of Haryana" MANU/SC/0546/2013 : 2013:INSC:349 : (2013) 7 SCC 675, in which it was held as follows:

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 motives."

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 Indian Penal Code 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)

24. It may be also noted that there may be occasions where a promise to marry was made initially but for various reasons, a person may not be able to keep the promise to marry. If such promise is not made from the very beginning with the ulterior motive to deceive her, it cannot be said to be a false promise to attract the penal provisions of Section 375 Indian Penal Code, punishable Under Section 376 Indian Penal Code."

16. What is held in paragraph Nos.22 and 23 herein above by the Supreme Court while recording findings in the case of ***Deepak Gulati Vs. State of Haryana***² is relevant to the facts of the present case also. The Supreme Court has clearly held that 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

² (2013) 7 SCC 675

were beyond his control, was unable to marry her, despite having every intention to do so.

17. The Supreme Court states that consent is an act of reason accompanied by deliberation and it may be express or implied, coerced or misguided, obtained willingly or through deceit.

18. In view of my above *prima facie* observations and the judicial pronouncements, further incarceration of Applicant is unwarranted and he has made out a case for grant of bail. Hence, Bail Application is allowed on the following terms and conditions:-

- (i) Applicant is directed to be released on bail on furnishing P.R. Bond in the sum of Rs.25,000/- with one or two sureties in the like amount;
- (ii) Applicant is permitted to furnish provisional cash bail of Rs.25,000/- for his release immediately and file undertaking that he will provide one or two sureties in the like amount of Rs.25,000/- within a period of four weeks after his release which shall be accepted by the Trial Court. Applicant shall provide sureties as directed;
- (iii) Before his actual release from jail, Applicant shall furnish his address where he proposes to reside after his release from jail to the concerned Police Station and

also to the trial Court;

- (iv) After his release from jail, Applicant shall report to the Investigating Officer as and when called for;
- (v) Applicant shall attend the trial Court on first Tuesday of every month between 11.00 a.m. and 1.00 p.m. to mark his presence. If the first Tuesday of the said month falls on a holiday and / or non Court working day, the Applicant shall mark presence on the next working day;
- (vi) Applicant shall co-operate with the conduct of trial and attend the trial Court on all dates unless specifically exempted and will not take any unnecessary adjournments, if he does so, it will entitle the prosecution to apply for cancellation of this order;
- (vii) Applicant shall not make any attempts to re-associate with the prosecutrix in any manner wither through a device or in-person and shall not reside in the jurisdiction of the Police Station wherein the prosecutrix is residing till the trial is concluded;
- (viii) Applicant shall not leave the State of Maharashtra without prior permission of the Trial Court;

(ix) Applicant shall not influence with any of the witnesses or tamper with the evidence in any manner; and

(x) In case of any infraction of the above conditions and / or two consecutive defaults in marking his attendance before trial Court, it shall attract the provisions of Section 439(2) of Cr.P.C. i.e. for cancellation of bail.

19. It is clarified that the observations made in this order are limited for the purpose of granting Bail only and I have not made any observations on merits of the case. The trial shall be adjudicated on the strength of the evidence led and strictly on its own merits being uninfluenced with any of the *prima facie* observations made herein above in this order.

20. Bail Application No.4068 of 2024 is allowed and disposed.

[MILIND N. JADHAV, J.]

Ajay