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

+ **BAIL APPLN. 2824/2024 & CRL.M.A. 23713/2024, CRL.M.(BAIL)
1326/2024 (for interim bail)**

**VIPIN KARPENTER THROUGH ITS WIFE RANJANA
KARPENTERPetitioner**

Through: Mr. R. N. Pareek, Advocate.

versus

THE STATE NCT OF DELHI THROUGH SHORespondent

Through: Mr. Utkarsh, APP for the State with
SI Priya, P.S.: Shakarpur.

**CORAM:
HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI**

**ORDER
15.01.2025**

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By way of the present petition filed under section 439 read with section 482 of the Code of Criminal Procedure 1973, the petitioner seeks regular bail in case FIR no.100/2023 dated 03.02.2023 registered under section 376 of the Indian Penal Code, 1860 ('IPC') at P.S.: Shakarpur, New Delhi.

2. As recorded in order dated 09.08.2024, since the petition was filed after 01.07.2024 and there was no earlier petition for the same relief pending before the court, the petition was treated as one under section 483 read with section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 ('BNSS'), by reason of section 531 BNSS, viz. the repeal and savings clause in the BNSS.



3. Notice on this petition was issued on 09.08.2024.
4. Status Report dated 17.09.2024 has been filed in the matter.
5. Nominal Roll dated 18.09.2024 has also been received from the Jail Superintendent.
6. Mr. R. N. Pareek, learned counsel appearing for the petitioner submits, that the essence of the allegations under section 376 IPC is that the petitioner engaged in sexual intercourse with the complainant/ prosecutrix on 'false promise' of marriage.
7. Mr. Pareek draws attention to para 14 of the status report filed by the Investigating Officer (I.O.), which reads as follows :

"14. During the course of investigation, the wife of the Petitioner was interrogated and she disclosed that marriage between her and the Petitioner was solemnized in 2015 and two children were born to them. She further disclosed that she was cohabiting with the Petitioner at Shakarpur since April 2021. She further disclosed that the Petitioner brought the victim 'K' to their home in her presence and that the Petitioner introduced the victim 'K' as a friend. She further disclosed that the victim 'K' visited their house around 3-4 times in her presence."

(emphasis supplied)

8. Counsel submits therefore, that the prosecutrix had visited the petitioner's house multiple times; had met the petitioner's wife; and was therefore well and fully aware that the petitioner was married and was residing with his wife and two children.
9. In the circumstances, it is argued that the allegation that the petitioner engaged in physical relations with the prosecutrix on a *false promise of marriage*, is wholly misconceived and unbelievable.



10. Counsel also draws attention to the observations of the Supreme Court in ***Pramod Suryabhan Pawar vs. State of Maharashtra & Anr.***,¹ *inter-alia* to the following extracts :

*“14. In the present case, the “misconception of fact” alleged by the complainant is the appellant’s promise to marry her. 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. In *Anurag Soni v. State of Chhattisgarh* [*Anurag Soni v. State of Chhattisgarh*, (2019) 13 SCC 1 : 2019 SCC OnLine SC 509] , this Court held : (SCC para 12)*

“12. The sum and substance of the aforesaid decisions would be that if it is established and proved that from the inception the accused who gave the promise to the prosecutrix to marry, did not have any intention to marry and the prosecutrix gave the consent for sexual intercourse on such an assurance by the accused that he would marry her, such a consent can be said to be a consent obtained on a misconception of fact as per Section 90 IPC and, in such a case, such a consent would not excuse the offender and such an offender can be said to have committed the rape as defined under Sections 375 IPC and can be convicted for the offence under Section 376 IPC.”

*Similar observations were made by this Court in *Deepak Gulati v. State of Haryana* [*Deepak Gulati v. State of Haryana*, (2013) 7 SCC 675 : (2013) 3 SCC (Cri) 660] (*Deepak Gulati*) : (SCC p. 682, para 21)*

“21. ... 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;”

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“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

¹ (2019) 9 SCC 608



*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)

11. Counsel submits that in the present case there is in fact no false promise of marriage at all, inasmuch as the prosecutrix was fully aware that the petitioner was a married man.
12. In this backdrop, it is further pointed-out that the deposition of the prosecutrix has been concluded before the learned trial court; the petitioner has served almost 02 years in judicial custody as an undertrial; his jail conduct has been 'satisfactory'; and that he has no other criminal involvements; and that therefore, he be enlarged on regular bail.
13. On the other hand, Mr. Utkarsh, learned APP appearing for the State opposes the grant of bail, submitting that the petitioner had put-out a fake profile of himself on the matrimonial website 'Jeevansathi.com', representing that he was not married, with the aim and intent of alluring innocent women, to engage with them on the pretext of marriage. It is argued that the prosecutrix fell into that trap and it is clear that the petitioner had sexual intercourse with her on a false promise of marriage.
14. Upon a conspectus of facts and circumstances of the case, especially the fact (i) that Status Report dated 17.09.2024 filed by the prosecution itself narrates, that as per the version of the petitioner's wife, the prosecutrix had visited their home and she had been introduced to the wife as the petitioner's friend; and considering that the petitioner has



already undergone almost 2 years in judicial custody as an undertrial, this court is persuaded to grant to the petitioner – ***Vipin Karpenter s/o Balu Singh*** – *regular bail* pending trial subject to the following terms and conditions :

- 14.1. The petitioner shall furnish a personal bond in the sum of Rs.25,000/- (Rs. Twenty-five Thousand Only) with 01 surety in the like amount from a family member, to the satisfaction of the learned trial court;
- 14.2. The petitioner shall furnish to the Investigating Officer/S.H.O., P.S.: Shakarpur, Delhi a cellphone number on which the petitioner may be contacted at any time and shall ensure that the number is kept active and switched-on at all times;
- 14.3. If the petitioner has a passport, he shall surrender the same to the learned trial court and shall not travel out of the country without prior permission of the learned trial court;
- 14.4. The petitioner shall not contact, nor visit, nor offer any inducement, threat or promise to any of the prosecution witnesses or other persons acquainted with the facts of case. The petitioner shall not tamper with evidence nor otherwise indulge in any act or omission that is unlawful or that would prejudice the proceedings in the pending trial; and
- 14.5. In case of any change in his residential address/contact details, the petitioner shall promptly inform the I.O. in writing.
15. Since the petitioner is facing trial and is therefore appearing before the learned trial court from time-to-time, it is not considered necessary to impose a reporting requirement as a condition of regular bail.



16. Nothing in this order shall be construed as an expression of opinion on the merits of the pending matter.
17. A copy of this order be sent to the concerned Jail Superintendent *forthwith*.
18. The petition stands disposed-of.
19. Other pending applications, if any, are also disposed-of.

ANUP JAIRAM BHAMBHANI, J

JANUARY 15, 2025
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