



2025:DHC:1171



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

Judgment Delivered on 24.02.2025

+ **BAIL APPLN. 8/2025 & CrI. M.A. 43/2025**

ANKIT RAJ

.....Petitioner

Through: Mr. Surya Narayan Singh, Sr.
Advocate with Mr. Raman Yadav, Ms.
Priyam Kaushik, Mr. Harshith
Pottangi and Ms. Aashi Arora, Advs.
Petitioner in person.

versus

STATE OF NCT OF DELHI & ANR.

.....Respondents

Through: Ms. Kiran Bairwa, APP for the State
with SI Soni Lal, PS Nabi Karim
Mr. Shiv Chopra, Ms. Surbhi Arora,
Mr. Siddharth Arora and Mr.
Dhanajay, Advocates for R-2
R-2 in person.

CORAM:

HON'BLE MR. JUSTICE VIKAS MAHAJAN

JUDGMENT

VIKAS MAHAJAN, J

1. The present petition has been filed by the petitioner under Section 528 BNSS 2023 seeking regular bail in connection with FIR No. 447/2024 under Section 376 IPC registered at Police Station Nabi Karim (North), Delhi.
2. The gravamen of the allegations against the present petitioner is that he had established physical relation with the prosecutrix on the pretext of false marriage.
3. Mr. Surya Narayan Singh, learned Senior Counsel appearing on behalf



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of the petitioner submits that from the reading of the FIR it is borne out that the petitioner as well as prosecutrix met through their respective families for the purpose of their marriage and thereafter the petitioner and prosecutrix were in regular touch. He submits that the relationship between the petitioner and the prosecutrix were consensual in nature. He further contends that the petitioner even got married to the prosecutrix on 21.01.2024 in the presence of witnesses.

4. To support his contention, Mr. Surya Narayan Singh has invited attention of the Court to the marriage certificate issued by Arya Samaj Mandir, Mithapur (Bihar) which has been annexed as Annexure A-2 to the present petition. He submits that even the status report filed by the State shows that the documents of marriage were verified and as per the verification report the petitioner and prosecutrix got married on 21.01.2024 with their own consent in the presence of the witnesses.

5. He further submits that the circumstances of the present case shows that it is not a case of false promise to marry, rather the petitioner did marry the prosecutrix. Even the prosecutrix has admitted the factum of marriage in her statement made before the CAW Cell, Subzi Mandi, Delhi, which has been annexed as Annexure-A3 to the petition.

6. He further contends that the FIR itself shows that the petitioner and prosecutrix had met on multiple occasions and travelled to various places and stayed in hotels. He submits that if the petitioner was forcibly establishing the physical relations with the prosecutrix or was repeatedly doing so on the false pretext of marriage, there was no occasion for the prosecutrix to meet the petitioner on various occasions.

7. He submits that the petitioner is in custody since 27.11.2024 and that



the question as to whether it is a case of false promise to marry, does not require custodial interrogation of the petitioner.

8. He submits that the petitioner does not have any criminal antecedents nor he is a flight risk.

9. *Per contra*, learned APP assisted by Mr. Shiv Chopra, learned counsel for the complainant/prosecutrix has argued on the lines of the status report. He submits that the FIR contains allegations that the petitioner established sexual relations with the prosecutrix during their visits to various places by making false promise to marry. Mr. Shiv Chopra additionally submits that some of the incidents alleged in the FIR are subsequent to the coming into force of the BNS, 2023 on 01.07.2024, therefore, even if the relationship was consensual, still it was made by making false promise to marry, therefore, the offence under Section 69 BNS, 2023¹ is made out.

10. I have heard the learned counsel for the petitioner as well as the learned APP for the State and the learned counsel for the complainant/prosecutrix and have also perused the record.

11. It is the case of the prosecution itself that there was a proposal of marriage alliance of the petitioner with the prosecutrix which appears to have been arranged by their respective families and that the petitioner and prosecutrix met for the first time along with their respective families.

12. From the perusal of FIR it is not clear that whether the petitioner and the prosecutrix got formally engaged or any date was fixed for their marriage

¹ 69. **Sexual intercourse by employing deceitful means, etc.**—Whoever, by deceitful means or by making promise to marry to a woman without any intention of fulfilling the same, has sexual intercourse with her, such sexual intercourse not amounting to the offence of rape, shall be punished with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine.

Explanation.— “deceitful means” shall include inducement for, or false promise of employment or promotion, or marrying by suppressing identity.



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with the consent of both the families. However, reading of the status report, makes it plain that the petitioner and prosecutrix got married on 21.01.2024 in Arya Samaj Mandir, Mithapur (Bihar) and this fact was duly verified as per the verification report referred to in the status report. Along with the petition also, a copy of the marriage certificate issued by the aforesaid Arya Samaj Mandir has been annexed. Further, the prosecutrix in her statement given to CAW Cell, Subzi Mandi, Delhi has stated that she married petitioner on 21.01.2024 as per Arya Samaj rituals. The said statement is annexed as Annexure-A3 to the petition.

13. In above backdrop, even assuming that the allegations of sexual relationship being established by the petitioner with the prosecutrix on the pretext of marriage to be correct, it cannot *prima facie* be said that the petitioner had no intention to marry the prosecutrix from the inception or that the petitioner had made any false promise to marry to deceive the prosecutrix.

14. In ***Deepak Gulati Vs. State of Haryana (2013) 7 SCC 675***, Hon'ble Supreme Court observed that there is a clear distinction between rape and consensual sex and further there is also distinction between mere breach of promise, and not fulfilling a false promise. 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. The relevant part of the judgment reads as thus:

*“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.

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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 IPC 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)



15. Likewise, in ***Pramod Suryabhan Pawar vs. Tate of Maharashtra (2019) 9 SCC 608***, it was observed as under:

“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.”....

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*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. ...”*

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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 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)



16. Similarly in **Anurag Soni v. State of Chhattishgarh (2019) 13 SCC 1**, it was observed as under:

“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.”

17. Thus, it cannot be said that the petitioner had no intention to marry, rather the case of the petitioner in the present petition is that marriage was solemnized by the petitioner with the prosecutrix in the presence of witnesses on 21.01.2024, though it is not borne out from the material on record that the said marriage had an imprimatur of the respective families of the petitioner as well as the prosecutrix. However, the factum of marriage has been affirmed by the State in its status report and is also supported by the prosecutrix in her statement given to CAW Cell.

18. The prosecutrix who appeared in person in the Court stated that the petitioner has subsequently married another woman, but the alleged fact is not borne out from the status report. Even assuming that the petitioner had subsequently married another woman, *prima facie* the same will not affect the legality of petitioner's marriage with the prosecutrix nor validity of such subsequent marriage of the petitioner to another woman is a subject matter of the present petition.

19. In so far Mr. Shiv Chopra's submission that offence is also made out



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under Section 69 of BNS, 2023, suffice to note that the said section came into force w.e.f. 01.07.2024 but the marriage of the petitioner with the prosecutrix was solemnized much prior to that on 21.01.2024, therefore, it remains doubtful that the offence of sexual intercourse by making false promise to marry, is made out under Section 69 of BNS, 2023. However, the ultimate call in this regard will be taken by the learned trial court at an appropriate stage.

20. It is also the case of the prosecution that the petitioner is an employee of Punjab National Bank, therefore, he does not appear to be a flight risk. Even otherwise, the allegation that it is a case of making false promise to marry is a matter of trial and does not warrant further custody. Further, the petitioner does not have criminal record.

21. In the facts and circumstances of the present case, this Court is of the view that the petitioner has made out a case for grant of regular bail. Accordingly, the petitioner is admitted to regular bail subject to his furnishing a personal bond in the sum of Rs. 25,000/- with one surety of the like amount to the satisfaction of the learned Trial Court/JMFC/Duty JM, further subject to the following conditions:

- a) Petitioner shall appear before the Court as and when the matter is taken up for hearing.
- b) Petitioner shall provide mobile number to the IO concerned which shall be kept in working condition at all times and he shall not change the mobile number without prior intimation to the Investigating Officer concerned.
- c) Petitioner/applicant shall not indulge in any criminal activity and shall not communicate with or come in contact with the witnesses or any family members of the witnesses.



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22. It is clarified that the observations made above are only for the purpose of the deciding the present petition for bail and nothing mentioned herein shall be construed as expression of opinion on the merits of the case.
23. The application is disposed of.
24. Copy of the order be forwarded to the concerned Jail Superintendent for necessary compliance.
25. Order *dasti* under signatures of the Court Master.

VIKAS MAHAJAN, J

FEBRUARY 24, 2025

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