

(2022) 08 DEL CK 0063

In the Delhi High Court

Case No : Bail Application No. 2300 Of 2022

Mohd. Sadab Khan

APPELLANT

Vs

State Govt.Of Nct Of Delhi & Anr.

RESPONDENT

Date of Decision : 08-08-2022

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 438
Indian Penal Code, 1860 — Section 376, 506

Citation : (2022) 08 DEL CK 0063

Hon'ble Judges : Poonam A. Bamba, J

Bench : Single Bench

Advocate : Vivek Kumar Mishra, Aurangzeb Khan, Anand Mishra, Mariya Mansuri, Ujwal Ghai, Priyanka Dalal

Final Decision : Disposed Of

Judgement

Poonam A. Bamba, J

1.0 This is an application under Section 438 Cr.P.C for grant of anticipatory bail moved on behalf of the petitioner in case FIR No. 475/2022 dated 13.07.2022, under Sections 376/506 IPC, PS Desh Bandhu Gupta (DBG) Road.

2.0 It is submitted that the petitioner is innocent and has been falsely implicated by the complainant. It is further submitted that the petitioner and the complainant/prosecutrix knew each other since 2019 being the employees of Jamia Milia Islamia University and were in consensual relationship; whatsapp chat exchanged between them clearly shows the relationship they shared.

2.1 It is also submitted that the petitioner as well as the respondent no. 2 were very well aware that both of them were already married and as such, there was no occasion for the petitioner to seek sexual favour from the respondent no. 2 on false promise of marriage. However, the respondent no. 2 started making unreasonable demands from the petitioner under the garb of their relationship; and ultimately on 13.04.2022, an agreement was executed between the

petitioner and the respondent no. 2, according to which, the petitioner had to purchase a flat amounting to Rs. 6-6.5 lakhs in Jamia Nagar for the complainant/prosecutrix, however she started demanding marital status, on which disputes arose between them. The prosecutrix then threatened him with dire consequences.

2.2 It is further submitted that the petitioner is a permanent employee of the Jamia Milia Islamia University and is a permanent resident of Delhi at the given address and there are no chances of his absconding.

2.3 It is also submitted that the petitioner has clean antecedents.

2.4 It is further submitted that the petitioner is ready to comply with any condition as may be imposed by this Court.

2.5 Mr. Salman Khurshid, Ld. Senior Counsel submitted that in view of above facts, the petitioner deserves anticipatory bail and placed reliance upon the judgments of Kerala High Court dated 22.06.2022 in Bail Appl. No. 3475 of 2022 titled as Vijay Babu vs. State of Kerala and that of Hon'ble Supreme Court dated 06.07.2022 in SLP (Crl.) No. 5986/2022 preferred by the prosecutrix against the said order titled as 'XXX vs. Vijay Babu & Ors., and judgments of Apex court (1) dated 21.08.2019 Criminal Appeal No. 1165 of 2019 titled as Pramod Suryabhan Pawar vs. The State of Maharashtra & Anr.; (2) judgment dated 27.06.2022 in Criminal Appeal No.(s) 442/2022 titled as Mandar Deepak Pawar vs. The State of Maharashtra & Anr. and (3) judgment dated 01.03.2021 in Criminal Appeal No. 233 of 2021 titled as Sonu @ Subhash Kumar vs. State of Uttar Pradesh & Anr.

3.0 On the other hand, Ld. Prosecutor strongly opposed this bail application submitting that the petitioner has been charged with rape and intimidation. The petitioner repeatedly raped the prosecutrix by extending false promise of marriage, although, he had no intention to marry her. When the prosecutrix requested the petitioner to marry her, he started extending threats to her and blackmailing her. On being threatened by the petitioner that he will release their intimate video, the prosecutrix took a drastic step of consuming sleeping pills and attempted suicide, due to which she remained admitted in hospital from 19.05.2022 to 21.05.2022.

3.1 Ld. Prosecutor further submitted that the investigation in the matter is at initial stage and the petitioner is deliberately not joining investigation and is evading arrest. His custodial interrogation is necessary to unearth relevant facts. Hence, his application for anticipatory bail deserves dismissal.

4.0 I have heard submissions made on behalf of both the sides and have duly considered the material on record.

5.0 Admittedly, the petitioner is aged about 35 years and the prosecutrix is about 34 years old; both were working in Jamia Milia Islamia University and came to know each other in the year 2019. The prosecutrix in her complaint has herself stated that she became friendly with the petitioner/accused and developed

physical intimacy with him; and that they established physical relations on several occasions at 3BS Hotel, Karol Bagh. Although, she further stated that the petitioner/accused established physical relations with her on the pretext of marriage.

5.1 It is the petitioner's case that the prosecutrix had consensual relationship with him being fully aware of his marital status; his (petitioner's) marital status was well known to everyone in the University including the prosecutrix, as both of them worked at Jamia Milia Islamia University for last four years. Ld. counsel for the petitioner also submitted that the prosecutrix herself was married. Both of them being already married, there was no occasion for the petitioner to seek sexual favour on a false promise of marriage, as alleged.

6.0 With respect to the prosecutrix's marital status, Ld. Prosecutor submitted that the prosecutrix was divorced by her husband Imran Khan in January 2020 after he came to know about her relationship with the petitioner.

6.1 Admittedly, the prosecutrix has been in relationship with the petitioner since 2019 i.e., prior to January 2020. Ld. Senior Counsel for the petitioner refuted that the prosecutrix had been divorced in 2020 and submitted that DD No. 98 dated 21.05.2022 shows that the prosecutrix is still married. It was submitted that on 21.05.2022, the prosecutrix along with her husband Imran Khan trespassed into the petitioner's house along with 4-5 boys; they abused him and his family members and demanded a sum of Rs.50,000/- and also threatened to falsely implicate them in case they failed to pay said amount. The petitioner had then approached police, on which, DD No. 98 dated 21.05.2022, PS Jamia Nagar, was recorded. It is also submitted that the petitioner even has the video of the aforesaid incident and if required, he can hand-over the same to the police. It was further submitted that the same clearly shows that the prosecutrix is not divorced and is still married and therefore, she could not have married the petitioner.

6.2 Above facts inter alia that the prosecutrix along with her husband Imran Khan trespassed into the petitioner's house along with 4-5 boys and other happenings as pleaded by Ld. counsel for the petitioner, are borne out from DD No. 98 dated 21.05.2022.

7.0 In Vijay Babu's case (supra), relied upon by the petitioner, the Kerala High Court granted anticipatory bail to the petitioner/accused noting that the prosecutrix was aware that the petitioner's marriage was subsisting and she involved with the petitioner during subsistence of his marriage, when there was no possibility of a legal marriage with the prosecutrix at that time.

7.1 Ld. counsel for the petitioner submitted that the Kerala High Court's judgment was challenged by the prosecutrix by way of SLP 5986 of 2022, which was dismissed by the Supreme Court vide order dated 06.07.2022 (supra).

7.1.1 It is seen that after considering the pleadings and other material on record,

the Apex court refused to interfere with the order of the Kerala High Court and dismissed the SLP.

7.2 It would also be pertinent to refer here to the judgment of the Hon'ble Supreme Court in Prashant Bharti vs. State (NCT of Delhi), (2013) 9 SCC 293, where Apex court has observed as under:

"2.prosecutrix alleged that the appellant..... was known to her for about four months.....

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5. the appellant-accused, had been having physical relations with her in his house, on the assurance that he would marry her....

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17. It is relevant to notice, that she had alleged, that she was induced into a physical relationship by Prashant Bharti, on the assurance that he would marry her. Obviously, an inducement for marriage is understandable if the same is made to an unmarried person. The judgment and decree dated 23.09.2008 reveals that the complainant/ prosecutrix was married to Lalji Porwal on 14.6.2003. It also reveals that the aforesaid marriage subsisted till 23.9.2009, when the two divorced one another. she had remained married to Lalji Porwal. In such a fact situation, the assertion made by the complainant/ prosecutrix, that the appellant/accused had physical relations with her, on the assurance that he would marry her, is per se false and as such, unacceptable. She, more than anybody else, was clearly aware of the fact that she had a subsisting valid marriage with Lalji Porwal. Accordingly, there was no question of anyone being in a position to induce her into a physical relationship under an assurance of marriage. In the aforesaid view of the matter, we are satisfied that the assertion made by the complainant-prosecutrix, that she was induced to a physical relationship by Prashant Bharti , the appellant-accused, on the basis of a promise to marry her, stands irrefutably falsified.

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23.8 Eighthly, the physical relationship between the complainant and the accused was admittedly consensual. In her complaints Priya had however asserted, that her consent was based on a false assurance of marriage by the accused. Since the aspect of assurance stands falsified, the acknowledge consensual physical relationship between the parties would not constitute an offence under Section 376 IPC. Especially because the complainant was a major on the date of occurrences, which fact emerges from the "certificate of marriage" dated

30.09.2008, indicating her date of birth ad 17.7.1986."

7.2.1 Thus, the apex court noted that when the prosecutrix herself was married at the given time, there was no question of her being induced into relationship on false promise of marriage.

8.0 In view of the above, I find force in the petitioner's argument that the petitioner being a married man was not competent to marry the prosecutrix (who herself was married) and could not have induced her into physical relationship on false promise of marriage.

9.0 In view of the above facts and circumstances, the petitioner deserves benefit of Section 438 Cr.PC. Accordingly, it is directed that in the event of arrest, the petitioner be released on bail, subject to his furnishing personal bond in the sum of Rs.25,000/-, with one surety of like amount to the satisfaction of Ld. Trial Court, subject to the following conditions :

- i. that the petitioner shall make himself available for investigation as and when required by the Investigation Officer (IO);
- ii. that the petitioner shall not contact/intimidate the prosecutrix in any manner;
- iii. that the petitioner shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the Court or to any police officer;
- iv. that he shall provide his mobile number to the IO and keep it operational all the times, and
- v. that in case of change in his residential address, and/or mobile number, the same shall be intimated to the IO/court concerned by way of an affidavit.

10.0 Present petition is disposed of accordingly.

11.0 Pending applications, if any, stand closed.