

(2018) 06 DEL CK 0007
In the Delhi High Court
Case No : BAIL APPL. 2195 OF 2017

PRASHANT KUMAR SINGH

APPELLANT

Vs

STATE (GOVT. OF NCT OF DELHI)

RESPONDENT

Date of Decision : 15-06-2018

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 161, 164, 439
Indian Penal Code, 1860 — Section 34, 376, 420, 506
Dowry Prohibition Act, 1961 — Section 4

Citation : (2018) 06 DEL CK 0007

Hon'ble Judges : ANU MALHOTRA

Bench : Single Bench

Judgement

1. Vide the present bail application no. 2195/2017, the applicant / petitioner seeks the grant of bail in terms of Section 439 of the Criminal Procedure

Code, 1973 in relation to the FIR No. 416/16, PS Mandawali in relation to which he has been in judicial custody since 25.12.2016 with the allegations

against him qua the alleged commission of the offences punishable under Sections 376/420/506/34 of the Indian Penal Code, 1860 and Section 4 of the

Dowry Prohibition Act, 1961 submitting that the charge-sheet in the instant case having already been filed and that the applicant is not required for any

custodial interrogation now.Â

2. The present application is the second bail application filed by the applicant / petitioner before this Court with the previous application having been

dismissed as withdrawn on 21.08.2017. Placed on record is the copy of the order dated 21.08.2017 of the previous Bail Application No. 549/2017 of

this Court of the applicant / petitioner, which indicates that the applicant / petitioner had withdrawn the said application submitting to the effect that he

does not want to press the bail application at this stage.

3. Taking the said aspect into account, the present application is held to be maintainable and has thus been taken up for consideration.

4. The FIR in the instant case is dated 22.11.2016 lodged on the complaint of the prosecutrix Ms. X against the applicant / petitioner including his

father and other family members i.e. 6 other persons other than the applicant / petitioner.

5. As per the FIR, the applicant / petitioner and the prosecutrix were in contact with each other as the applicant / petitioner used to visit the house of

her brother as he was the cousin brother of her brother-in-law (Manoj Kumar Singh) and that in the year 2009, the applicant / petitioner told the

prosecutrix that he liked her very much and wanted to marry her but that she told him that she could not marry him against the wishes of her family

members and suggested him to talk to her parents, whereafter the applicant / petitioner contacted her brother (Rajesh Kumar Singh) and informed him

of his willingness to marry the prosecutrix, but the brother of the prosecutrix asked him to first talk to his parents but the applicant / petitioner stated

that his parents would not be agreeable for the marriage that they are expecting a huge dowry and cash in the marriage as the applicant / petitioner at

that time in the year 2009 was working in a good post and earning more than Rs.20,000/- per month and thus the brother of the prosecutrix had

refused the proposal but even thereafter, the applicant / petitioner did not stop talking to the prosecutrix and forced her to talk to him telephonically and

assured him that he loved her very much and he would persuade his family members for this marriage and on this assurance according to the

prosecutrix, he forced the prosecutrix to have sexual relationship and he made sexual relationship, with her against her wishes but she did not narrate

about this act of the applicant / petitioner as she was hoping that one day the applicant / petitioner would marry her and that the applicant / petitioner

committed rape continuously with her even after performing the engagement ceremony with her on the false promise to marry her and that the

applicant / petitioner continuously harassed her physically and made physical relations with her against her wishes on the false promise of marrying her

and that she being a simple girl could not smell his bad intentions and thus did not narrate about this incident to her family members.

6. In the FIR itself, the prosecutrix stated that the applicant / petitioner had taken her to the property No. A-62, Second Floor, North Vindo Nagar, Mandawali, Delhi â?" 92 in the year 2009 and to E-1/A, Second floor Gali No. 11, Mandawali Unchepar, Delhi in the years 2012 to 2013 and to A-73, Room No. 4, Gali No. 16, Mandawali Unchepar, Delhi â?" 110092 in the years 2014 to 2016 and committed rape with her against her wishes and false assurance of marrying with her.Â

7. The prosecutrix further alleged that in the month of January, 2015, some marriage proposal came to her house for her marriage and then she asked the applicant / petitioner to talk to his parents as she was worried that her parents could solemnize her marriage with some third person and the applicant / petitioner assured her that she need not worry as he would persuade his family members and the applicant / petitioner assured her that his family members would come to her house with the marriage proposal and that in the first week of April, 2015, the applicant / petitioner along with Mr. Gyaneshwar Prasad Singh and Smt. Subhadra Devi his parents had come to the house of her brother with the marriage proposal and informed them that the applicant / petitioner wanted to marry herÂ to which her brother told them that earlier in the year 2009, the applicant / petitioner himself had come with the marriage proposal but as his family were not in a position to fulfill their expectations of dowry, the marriage had not taken place to which the parents of the applicant / petitioner told that they are not expecting a lot in the marriage as this will be a love cum arranged marriage and the parents of the applicant / petitioner assured her brother that he could spend money according to his capacity in the marriage of the prosecutrix.Â

8. The prosecutrix has further stated through the FIR that after discussion in the family, the marriage proposal of the applicant / petitioner was accepted and the engagement ceremony was performed on 22.04.2015 at Hotel Samrat International, Patna and around 50 persons were gathered from both the sides and her family had spend Rs.50,000/- on the booking of the venue, Rs.1,51,000/- in cash was given to the applicant / petitioner, Rs.11,000/- each to the accused nos. 2 to 7 and Rs.1,000/- each to the family members / relatives of the family of the said persons and apart from the same, her parents had given a diamond ring to the applicant / petitioner worth Rs.65,000/- and a gold ring of 7 grams worth Rs.20,000/-, a gold chan of

1.5 tola worth Rs.40,000/-, a watch of Rs.6,000/- (make Titan), two suits of Raymond of Rs.30,000/-, two sarees to the accused no. 3 worth

Rs.6,000/-, one gold ring to accused no. 3 worth Rs.15,000/-, one gold ring to accused no. 2 worth Rs.15,000/- along with one Raymond Suit worth

Rs.12,000/-, four heavy sarees to accused nos. 4 & 5 worth Rs.20,000/-, two pairs of ear rings worth Rs.15,000/-, two suits to the accused no. 6

worth Rs.6,000/-, one pair of ear rings of Rs.8,000/-, two Raymond suits to the husbands of Pallavi and Nishu worth Rs.25,000/- and clothes to the

children of Pallavi and Nishu worth Rs.5,000/- and Rs.10,000/- was spent on sweets and fruits and thus her parents and brother had spent Rs.6 lakhs

in the engagement ceremony.

9. The prosecutrix through the FIR stated that her parents and brother asked the accused nos. 1, 2 & 3 to discuss about the marriage program and the

accused nos.2 & 3 told them that they are not in a hurry in fixing the marriage and they are firstly thinking to solemnize the marriage of the applicant /

petitioner after solemnization of the marriage of their younger daughter Pooja i.e. accused no. 4 of the accused nos. 2 & 3, which was not opposed by

the family members of the prosecutrix as they needed time to arrange money for the solemnization of the marriage.Â

10. As per the FIR on 14.03.2016 the father of the prosecutrix expired and after performing his rites and other customs, her brother informed the

accused nos. 2 & 3 that now the marriage could not be solemnized for a year in view of the customs due to the demise of her father to which they

stated that they do not have any problem as they are looking for a good match for Pooja and only then they will solemnize the marriage of the

applicant / petitioner and they assured her brother in a year, they will definitely solemnize the marriage of Pooja and in the meantime her brother

Rajesh Kumar Singh got sold the property situated in Dwarka, New Delhi for arranging money and requested the accused nos. 2 & 3 to fix the

marriage of the applicant / petitioner but they were adamant to first solemnize the marriage of Pooja i.e. the sister of the appellant.Â

11. The prosecutrix has further stated that as per the FIR in the first week of April, 2016, the accused nos. 1, 2 & 3 contacted her brother and

informed him that they had got a suitable match for Pooja but her in-laws were demanding Rs.15 lakhs along with a luxury car and that the said

amount would be adjusted in the marriage of the applicant / petitioner and thus her brother gave a sum of Rs.7 lakhs to the accused nos. 1, 2 & 3

and stated that he could not arrange the heavy amount of Rs.15 lakhs as now he has to keep some money for the marriage of the prosecutrix also. It

has been submitted through the FIR that there was no marriage fixed for Pooja and that in the last week of September, 2016, her brother asked as to

when the marriage of the Pooja would be fixed to which applicant / petitioner informed that the marriage of Pooja had been cancelled as some

disputes had arisen between them.

12. According to the prosecutrix from October, 2016, the applicant / petitioner and her parents started pressurizing her and her brother to give Rs.20

lakhs in cash in the marriage of the applicant / petitioner and also pressurized her brother to transfer his property situated at NOIDA in the name of

the applicant / petitioner and when the prosecutrix and her brother tried to make them understand to forgo their demands, the applicant / petitioner

threatened her and her brother to break the proposed marriage. The applicant / petitioner further submitted that she had learnt that the applicant /

petitioner was going to marry with some other girl on or before 25.11.2016 in District Muzaffarpur, Bihar and was making contact with the applicant /

petitioner and his family members and relatives but none had come forward and when her brother made calls to the applicant / petitioner not to

marry the other girl as the same could cause a loss of reputation, dignity and monetary loss to the prosecutrix and her family members they paid no

heed to the same and did not return any article nor cash nor jewellery that was given to the applicant and his family members.

13. The prosecutrix thus submitted through the FIR that the applicant / petitioner and his family members have ruined and spoiled the life, dignity, honour and reputation

and of the prosecutrix and caused mental loss to the prosecutrix and her family members and they were also greedy for dowry. The prosecutrix

further submitted to the effect that she had no other option but to commit suicide as the applicant / petitioner had ruined her life and destroyed her

dreams by not solemnizing the marriage with her just because of no fulfillment of their dowry demands and high expectations and sought that the

applicant / petitioner be incarcerated.

14. The statement of the prosecutrix under Section 164 of the Code of Criminal

Procedure, 1973 indicated to have been recorded on 24.11.2016, indicates that the prosecutrix was a graduate and had done B.Com and that she was aged 29 years at the time of the recording of her statement and she stated to the effect that she came to Delhi in the year 2009 and lived with her brother where her sister's husband's cousin brother i.e. the applicant / petitioner used to come there and had proposed to her and told the prosecutrix that he liked her very much and wanted to marry her but that his family members would not agree and would also demand dowry and that the applicant / petitioner stated that the marriage could not take place without the consent of the family members of the applicant / petitioner but despite the same, the conversations between the applicant / petitioner and the prosecutrix continued as the applicant / petitioner had stated that he would persuade his family members for this marriage.Â

15. As per the statement dated 24.11.2016 of the prosecutrix under Section 164 of the Code of Criminal Procedure, 1973 on 22.10.2009, the applicant

/ petitioner had taken her to his house where he had forcibly made physical relations with her and when she started crying, he told her that he would

marry her and he had told her that whether they had sexual relations before or after the marriage the same made no difference and she had agreed to

this whereafter they had sexual relations several times because according to the prosecutrix the applicant / petitioner continuously repeated that he

would marry her and in the month of April, 2015, his family members also came to talk about the marriage and they got engaged on 22.04.2015 at

Patna and that the marriage date was fixed for about a year but in March, 2016 the father of the prosecutrix expired and the marriage got postponed

for a year and that some days before she had learnt that the applicant / petitioner was to get married on 25.11.2016 with some other girl and the

prosecutrix stated that her brother had given a sum of Rs.7 lakhs also for the marriage of the Pooja, sister of the applicant / petitioner which was to be

adjusted in her own marriage and that the applicant / petitioner had cheated her and was marrying someone else and had ruined her life also.Â

16. Notice of the application was issued to the State.Â

17. A status report dated 28.01.2018 was submitted by the State under the signatures of Inspector Subhash Chandra, SHO PS Mandawali, Delhi

which indicates that the prosecutrix had declinedÂ her internal examination

during the course of the investigation and that the applicant / petitioner was arrested on 25.12.2016 from Bihar and despite the grant of police custody remand for recovery of dowry articles, no dowry items could be recovered and that all other accused persons named in the FIR i.e. Gyaneshwar Prasad Singh, Subhadra Devi, Ms. Palliv w/o Sh. Sanjeev Kumar Singh, Nishu w/o Sh. Abhishek Singh, Ms. Pooja d/o Gyaneshwar Prasad Singh, Abhishek Singh (husband of Nishu) have been granted anticipatory bail by the Court of the learned ASJ, Karkardooma Courts, Delhi but the bail application of the applicant / petitioner was declined and that the charge-sheet in the instant case after completion of investigation against the applicant / petitioner under Sections 376/420/506/34 of the Indian Penal Code, 1860 and Section 4 of the Dowry Prohibition Act, 1961 was submitted on 04.02.2017 and that the matter at that time was pending for consideration of charge.Â

18. On the date 11.12.2017, the State submitted that there was no compliance by the petitioner on directions qua the proceedings dated 27.03.2017 in

Bail Application No. 549/2017 qua which it was submitted on behalf of the applicant / petitioner that there was no direction for any deposit of any amount and that vide proceedings dated 21.08.2017, the said bail application has already been withdrawn.Â

19. Vide order dated 11.12.2017, it was observed to the effect that without any observation on the merits or demerits of the case, taking into account

the statement made on behalf of the applicant that the applicant would still be willing to deposit the expenses incurred by the complainant, in the event

of her production of bills in relation to the engagement of the complainant with the petitioner qua which it is submitted by the learned counsel for the

complainant that the bills are in the possession of the complainant, copies of the said bills were directed to be supplied to the investigating agency and

were directed to be supplied to the applicant as well and to be placed on the record and the verification report of the said bills placed on record being

called for from the Investigating Agency.Â

20. The said verification report was submitted by the State through the status report dated 28.01.2018 and the status report dated 16.04.2018 filed is to

similar effect to report that qua the articles of the gold, the amount of the bills had been verified to be to the tune of Rs.15,400/- qua bill dated

18.04.2015 and to the bill to the tune of Rs.81,567/- dated 06.05.2012 for the ear ring and 2 finger rings for the sister-in-law of the complainant and

Rs.85,715 dated 03.01.2010 for 2 chains in the name of sister-in-law of the complainant.Â Â

21. The said status report also stated that the prosecutrix also supplied the passbook copy showing withdrawal of the money but the specific

withdrawal entries were not specified which were made to arrange the dowry nor the specific dates on which the dowry was given to the accused

persons, though the prosecutrix had supplied the copy of the sale deed dated 18.06.2016 of the land of Village Sukhasan, Madhepura, Bihar which was

sold by her brother and the copies of the bank account statements of her mother and sister-in-law were supplied by the complainant.Â Â

22. Through the written submissions that have been made on behalf of the applicant / petitioner, it has been submitted that the applicant / petitioner has

clean antecedents and that the jail conduct of the applicant / petitioner is satisfactory and he has been awarded a certificate of good conduct and hard

work and that there is a delay of seven years in the registration of the FIR and that the MLC bearing no. 055 dated 22.11.2016 of the examination of

the prosecutrix at Lal Bahadur Sahastri Hospital, Khichripur, Delhi is to the effect : -

â??Victim (Rashmi) giving H/o knowing the accused â?" Prashant Singh since 2009 (family friend), after which they developed friendship &

committed to many each other. They have first consumed intercourse on 22nd Oct., 2009 and then had regular intercourse after that. They got

engaged on 22nd April, 2015. Pt got preg in Aug., 2014 after which the boy gave her abortifacient pills. (UPT + Ve at home).

Pt had last intercourse in Jan., 2016. Now the guy has refused to marry her, & she has lodged complaint against him.â??Â

and thus it has been submitted on behalf of the applicant / petitioner that the prosecutrix herself admitted to consensual intercourse on 22.10.2009 and

to regular intercourse thereafter.Â

23. The applicant / petitioner has further submitted that there are major contradictions in the statement of the prosecutrix and her statements under

Section 161 and 164 of the Code of Criminal Procedure, 1973 and in the history on the MLC, that the statement of the house owner namely Ramesh

Gupta s/o Sh. Shanker Lal Gupta r/o F-13, Gali no. 11, Vinod Nagar, Delhi was contrary to the allegations of the prosecutrix and that no bills were

furnished in support of the demand of dowry by the complainant during the investigation and not even when called by the Investigation Officer and not

even before this Court and that the status report submitted was contrary to the version of the prosecutrix. The applicant / petitioner further submits

that the prosecutrix was aged 30 years, highly qualified being a graduate and working and was able to understand what is good and what is bad and

also the consequences of premarital sex and that her statement under Section 161 of the Code of Criminal Procedure, 1973 also indicates that her first

physical relations with the applicant / petitioner were on

22.10.2009 when initially there was no terms to marry and thus it was not a case of rape and that even after that her family members had refused for

the marriage but even thereafter the prosecutrix and the applicant / petitioner continued to have physical relations and that she was a consenting party.

The applicant / petitioner further submits that release on bail is the rule and that he is only the bread earner of his entire family and that the physical

relations between the prosecutrix and the applicant / petitioner have been consensual and as to whether it was a marriage or a live in relationship, can

only be established through trial but does not suffice to further incarcerate the applicant / petitioner in custody. It has been submitted on behalf of the

applicant / petitioner that he has to be presumed to be innocent till proved guilty and that proving his guilt lay on the prosecution.Â

24. Reliance was inter alia placed on behalf of the applicant / petitioner on a catena of verdicts in support of his contentions i.e. on the verdict of

Jagdish Nautiyal Vs. State 2013 (1) JCC 311 in which case the accused was granted anticipatory bail subject to conditions observing to the effect that

where there was no custodial interrogation required and there was no prima facie evidence to show that the prosecutrix had not been threatened by

the accused in any manner, it was the totality of the circumstances which had to be seen in as much as the aspect of the alleged sexual abuse of the

prosecutrix under the guise of the co-called marriage or promise to marry can only be ascertained through trial and does not require any custodial

interrogation nor any recovery.Â

25. Reliance was also placed on behalf of the applicant / petitioner on the verdict

of Rohit Chauhan Vs. State of NCT of Delhi 200 (2013) DLT 380 in

which case the prosecutrix had alleged to have had physical relations with the applicant / petitioner for more than 2½ years whereafter it was

alleged that the accused had refused to marry her and that thereafter he married her with the assistance of the police and then allegedly raped her.

The applicant therein was allowed to be released on bail observing to the effect that each case has to be dealt with on its factual matrix and no set

principle or strait-jacket can be applied specifically while dealing with the bail matters where only a prima facie view can be taken to appreciate the

facts in the given case and that the accused in the said case was allowed to be released on anticipatory bail in as much as there was a considerable

delay in lodging the FIR and it was observed to the effect that the prosecutrix in that case had a physical relationship with the accused for more than

2½ years and it was not just a single act but the same continued for a period of three years and thus in a prima facie case was found to be made

out to grant anticipatory bail in the said case.Â

26. Reliance was also placed on behalf of the applicant / petitioner on the verdict of this Court in Vikul Bakshi Vs. The State (NCT of Delhi) 2016 (1)

JCC 54 in which case the applicant / accused was granted anticipatory bail in as much as the parties were acquainted with each other before the

incident, and physical relations allegedly took place between them on the alleged promise to marry and the prosecutrix lodged the FIR when the

petitioner and his parents declined to solemnize their marriage and there was a delay in lodging of the FIR.Â

27. Reliance was also placed on behalf of the applicant / petitioner on the verdict of this Court in Rohit Kumar Tomar Vs. State Govt of NCT Delhi,

2016 LawSuit (Del) 3540 in which case the promise to marry did not fructify and the prosecutrix and the accused in that case were known to each

other prior to the registration of the FIR and negotiations for the marriage between the parties did not materialize after the roka ceremony had taken

place on 14.01.2014 between the accused and prosecutrix on that case and that on 11.10.2015 the prosecutrix received an SMS from the petitioner

expressing his inability to marry her and thus the FIR had been registered.Â

28. Reliance was also placed on behalf of the applicant / petitioner on the verdict of this Court in Vishal Grover Vs. State 2017 (91) JCC 19 in which

case the applicant therein was granted anticipatory bail in as much as the applicant was willing and ready to join the investigation and that the prosecutrix has alleged in the FIR that for the first time physical relations between the parties took place in March, 2014 on her own residence and since then they were in relationship. According to the prosecutrix, the applicant had established physical relations on the promise of the marriage and backed down from the same and as to whether or not there was a promise of marriage for establishment of physical relationship was held to be a matter of trial.Â

29. Reliance was also placed on behalf of the applicant / petitioner on the verdict of this Court in Sumit Pillai Vs. The State (Govt. of NCT) Delhi in bail application no. 2210/16 in which it was contended that the prosecutrix had herself admitted that she was in live-in relationship with the petitioner and the petitioner was not required for custodial investigation in which case also the applicant therein was allowed to be released on bail.Â

30. Reliance was also placed on behalf of the applicant / petitioner on the verdict of this Court in Ashu Kumar (In J.C.) Vs. State 2009 (2) JCC 1445 to contend that the prosecutrix was 25 years of age the time of the incident and was known to the petitioner since class Xth and attended tuitions together and that the parents of both the prosecutrix and petitioner opposed the marriage and that the petitioner got engaged to another girl and the offence of rape allegedly took place on 17.03.2008 and the complaint was lodged on 21.03.2008 and the MLC reported no fresh injury nor sign of struggle or resistance and the FSL report gave no detection of semen on the undergarments of both prosecutrix and petitioner which aspect was serious and which required evidence of material witnesses. It was thus contended that the applicant was released on bail in the said case.

31. Reliance was also placed on behalf of the applicant / petitioner on the verdict of this Court in Pankaj Vs. State Govt. of NCT of Delhi in bail application no. 339/2016 whereby vide order dated 08.03.2016 of this Court, it was contended that the applicant and the prosecutrix were known to each other for the last about 10 years and that the physical relations took place between the two on various occasions albeit on the alleged promise to marry with the charge-sheet having been filed and the accused in the said case was granted bail.Â

32. Reliance was also placed on behalf of the applicant / petitioner on the verdict of this Court in Ashroo @ Ashar Vs. The State (Govt. of NCT

Delhi) in bail application no. 1981/2015 in which case the charge-sheet had been filed and that the parties were acquainted with each other since long

and that the physical relations took place between them on the alleged promise to marry several time.Â

33. Reliance was also placed on behalf of the applicant / petitioner on the verdict of this Court in Deepak Dua Vs. State of NCT of Delhi & Anr. in

bail application no. 2369/2016 and Krishan Kumar Vs. State (Govt. of NCT Delhi) in bail application no. 2447/2016 to contend that there was delay in

the institution of the FIR and there was variation in the statement made for registration of the FIR and in the statement under Section 164 of the Code

of Criminal Procedure, 1973 and the statement that had been made during the course of the investigation.Â

34. Reliance was also placed on behalf of the applicant / petitioner on the verdict of this Court in Mohd. Moiz Vs. State (GNCT of Delhi) in bail

application no. 2207/2016 to submit that the charge-sheet had been filed and that the prosecutrix and the accused were known to each other in which

the prosecutrix claimed to have entered into physical relations with the accused on a false promise of marry and that the expression of the

conversations between the prosecutrix and the accused in the said case also indicated that there were only consensual relations between the

prosecutrix and the accused in that case was thus granted bail.Â Â

35. Reliance was also placed on behalf of the applicant / petitioner on the verdict of this Court in Sandeep Kumar Vs. State (NCT of Delhi) in bail

application no. 1182/2017 dated 03.07.2017 in which case it was submitted that the victim was a major of 36 years age and refused to undergo

medical examination (Gynae) and there was nothing to be recovered from or at the instance of the petitioner and the petitioner therein was thus

granted anticipatory bail, it having been observed to the effect as to whether the prosecutrix was being blackmailed by the applicant that he had made

a video of the alleged incident had to be treated on trial.Â

36. Reliance was also placed on behalf of the applicant / petitioner on the verdict of this Court in Inderjeet Vs. The State Govt. of NCT of Delhi in bail

application no. 2292/16 dated 09.02.2017. Similar submissions were raised

through contentions raised in Govind Raj Vs. The State NCT of Delhi in bail application no. 1408/2017 dated 25.07.2017 wherein the applicant was granted interim bail.Â

37. Reliance was also placed on behalf of the applicant / petitioner on the verdict of this Court in Jitender Kumar Vs. Govt. of NCT of Delhi 2016 (2)

JCC 1022 to contend that the bail cannot be withdrawn as a punishment and even assuming that the accused is prima facie guilty of a grave offence

bail cannot be refused in terms of the process of punishment and that there was nothing to show that the applicant would evade from the process of

law and that he ought to be released on bail presuming his innocence.Â

38. Reliance was also placed on behalf of the applicant / petitioner on the verdict of the Honâ??ble Supreme Court in Dataram Singh Vs. State of

Uttar Pradesh & Anr. 2018 LawSuit (SC) 84 observing to the effect : -

â??2. A fundamental postulate of criminal jurisprudence is the presumption of innocence, meaning thereby that a person is believed to be innocent

until found guilty. However, there are instances in our criminal law where a reverse onus has been placed on an accused with regard to some specific

offences but that is another matter and does not detract from the fundamental postulate in respect of other offences. Yet another important facet of

our criminal jurisprudence is that the grant of bail is the general rule and putting a person in jail or in a prison or in a correction home (whichever

expression one may wish to use) is an exception. Unfortunately, some of these basic principles appear to have been lost sight of with the result that

more and more persons are being incarcerated and for longer periods. This does not do any good to our criminal jurisprudence or to our society.

3. There is no doubt that the grant or denial of bail is entirely the discretion of the judge considering a case but even so, the exercise of judicial

discretion has been circumscribed by a large number of decisions rendered by this Court and by every High Court in the country. Yet, occasionally

there is a necessity to introspect whether denying bail to an accused person is the right thing to do on the facts and in the circumstances of a case.

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5â?|â?|â?|â?|.

6â?|â?|â?|â?|.

7. However, we should not be understood to mean that bail should be granted in every case. The grant or refusal of bail is entirely within the discretion

of the judge hearing the matter and though that discretion is unfettered, it must be exercised judiciously and in a humane manner and compassionately.

Also, conditions for the grant of bail ought not to be so strict as to be incapable of compliance, thereby making the grant of bail illusory.â??,

to contend that the applicant ought to be released on bail in the instant case.Â

39. Reliance was also placed on behalf of the applicant / petitioner on the verdict of this Court in State Vs. Sumit Kumar 2017 LawSuit (Del) 2295 in

which case it was submitted that the facts of the said case were in â??pari materiaâ?? with the allegations in the instant case against the applicant

and that in that case State of Rajasthan Vs. Raja Ram 2003 CrLJ 3901, the appeal filed by the State against acquittal of the appellant was dismissed

with it having been observed in similar facts to the effect : -

â??7. On a perusal of the entire statement of the prosecutrix, it reveals that the prosecutrix, aged around 31 years, was well aware as to what were

the consequences of her establishing physical relationship with the respondent. Nothing has emerged on record to show if any time, the victim's

consent for physical relationship was obtained by deceit or on the false pretext to marry. During long three years, the victim did not insist for marriage

with the respondent. She did not apprise her parents about her inclination to marry the respondent. She did not examine any her family member to

corroborate her version if any such talks for marriage were going on between her and the respondent or they were aware of it. The prosecutrix did

not take into confidence her parents. She did not reveal to them if physical relationship had take place with the respondent at any stage on the promise

to marry. It has, however, come on record that during this period victim's parents used to give matrimonials in the newspapers for her marriage. The

victim was aware of the matrimonials and never asked her parents not to go for that as she was expecting marriage with the respondent. The Trial

Court has given cogent reasons to arrive at the conclusion that at no stage, the respondent had promised to marry the victim. Various e-mails sent by

the victim have been reproduced in the impugned judgment. In the said e-mails at no stage, the victim insisted for her marriage with the respondent.

Even in the first week of January, 2008, when the physical relationship occurred,

initially there was no promise to marry. The Trial Court was of the view that there was no forcible rape upon the victim. She did not raise any alarm. She maintained complete silence on the so called promise to marry. After the alleged commission of rape, the victim did not take any steps, whatsoever, to lodge complaint against the respondent. Contrary to that, she continued to have physical relations with the respondent at various places even at her residence. There was no compulsion for the victim to have physical relations with the respondent simply to get the alleged promise to marry fulfilled. Nothing is on record to show if any injuries, whatsoever, were found on victim's body including her private parts in the alleged forcible rape in the first week of January, 2008. In her MLC no external injuries on her body, whatsoever, were noticed. Apparently, physical relationships between the prosecutrix and the victim (if any) were with her consent. This relationship continued for long three years and the victim had no complaint, whatsoever, against the respondent's conduct and attitude any time. Only when the respondent attempted to keep distance from her, she got enraged and lodged the instant complaint. She was agitated as the respondent had decided to perform marriage with another girl. She even approached the said girl who appeared as defence witness as DW-2. She is Megha Kapoor who performed marriage with the respondent after engagement on 19.02.2011. The marriage took place on 06.11.2011. She had no complaints against the respondent. The victim had come to her office M/s IBM at Gurgaon on 7th or 8th September, 2011. She threatened her that she would not allow her alliance with the respondent. DW-2 informed her parents and in turn they talked to the parents of the respondent. She further deposed that 'X' had issued similar threats to her parents also on telephone. The victim had no occasion to intimidate DW-2, the lady with whom the respondent was to marry.

8. The impugned judgment based upon fair appreciation of evidence deserves no intervention. The law regarding appeals against acquittal is well settled. Even if two views are possible, the appellate court could not ordinarily interfere with the judgment of acquittal. The appellate court may overrule or disturb the Trial Court's acquittal if it has very substantial and compelling reasons for doing so. In the instant case, nothing is on record to infer if the judgment recorded by the Trial Court is perverse. Settled legal

position is that conviction can be based upon the sole testimony of the prosecutrix provided it is reliable and is of sterling quality. The testimony should be beyond suspect and of very high quality. A case of sexual assault has to be proved beyond reasonable doubt as any other case and that there is no presumption that a prosecutrix would always tell the entire story truthfully. Though the statement of prosecutrix must be given prime consideration, at the same time, broad principle that the prosecution has to prove its case beyond reasonable doubt applies equally to a case of rape. In the instant case, the testimony of the victim is highly disputed and unreliable.

There is delay of three long years in lodging the report with the police on the alleged promise to marry after the so called commission of rape took

place in the first week of January, 2008. In the State of Rajasthan vs. Raja Ram 2003 CriLJ 3901 the court held:

There is no embargo on the appellate Court reviewing the evidence upon which an order of acquittal is based. Generally, the order of acquittal shall

not be interfered with because the presumption of innocence of the accused is further strengthened by acquittal. The golden thread which runs

through the web of administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the

guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. The paramount consideration of

the Court is to ensure that miscarriage of justice is prevented. A miscarriage of justice which may arise from acquittal of the guilty is no less than from

the conviction of an innocent. In a case where admissible evidence is ignored, a duty is cast upon the appellate Court to re-appreciate the evidence in

a case where the accused has been acquitted, for the purpose of ascertaining as to whether any of the accused committed any offence or not. [See

Bhagwan Singh and Ors. v. State of Madhya Pradesh]. The principle to be followed by appellate Court considering the appeal against the judgment of

acquittal is to interfere only when there are compelling and substantial reasons for doing so. If the impugned judgment is clearly unreasonable, it is a

compelling reason for interference.

9. Resultantly, the appeal filed by the State is without substance and is dismissed.â??â??

40. Reliance was also placed on behalf of the applicant / petitioner on the verdict

of Honâ??ble Supreme Court dated 06.04.2018 in Special Leave to Appeal (Crl.) 454/2017 in case titled as Shivashankar @ Shiva Vs. State of Karnataka & Anr. vide which the appeal filed by the applicant / petitioner against the impugned order dated 22.09.2016 of the High Court of Karnataka in Criminal Petition No. 769/2016 refusing to quash the criminal proceedings in CC No. 6820/2015 arising out of Crime No. 254/2014 for the offence punishable under Sections 376, 420, 323 and 506 of the Indian Penal Code, 1860, was allowed and the impugned order of the High Court of Karnataka was set aside with the facts of the said case being to the effect that the gravamen of the charge against the appellant accused was that he had raped respondent no. 2 the complainant but it was found from the complaint filed by the complainant that the respondent no. 2 complainant had lived with the appellant for a period of about eight years and claimed that the appellant had pretended to have loved her and on the promise of marriage, that he applied the kumkum on her forehead and tied the Arishina thread to her neck and the complainant further stated that she has been treating the appellant as her husband for the last eight years and now he is trying to escape from her and cheat her with it having been observed by the Honâ??ble Supreme Court that there was no doubt in the circumstances that the complainant and the accused had lived together as the married couple even according to the complainant and that in the facts and circumstances of the case, it is difficult to sustain the charges levelled against the appellant who may have possibly, made a false promise of marriage to the complainant and that it was observed further that â??It is, however, difficult to hold sexual intercourse in the course of a relationship which has continued for eight years, as â??rape? especially in the face of the complainant?s own allegation that they lived together as man and wifeâ??

41. It was thus contended on behalf of the applicant / petitioner that the applicant / petitioner be thus released on bail, he having been in incarceration since 25.12.2016 and till date with the charge-sheet having been filed, investigation being complete, his conduct being satisfactory and there being no likelihood of his evading trial and there being no scope of his tampering with the evidence coupled with the factum that all six other accused persons in the instant case were on anticipatory bail.

42. The State whilst refuting the contentions raised on behalf of the applicant /

petitioner, opposed the prayer.

43. On a consideration of the rival submissions taking the delay in registration of the FIR into account and the factum that the first sexual intercourse

between the applicant / petitioner and the prosecutrix took place on 22.10.2009 and the complainant in the FIR and in the statement under Section 164

of the Code of Criminal Procedure, 1973 and the averments made in the MLC bearing no. 055 dated 22.11.2016 of the examination of the prosecutrix

at the Lal Bahadur Sahastri Hospital, Khichripur, Delhi and with the submissions made at the time of the medical examination being interalia to the

effect that the relations between the applicant / petitioner and the prosecutrix were prima facie consensual, coupled with the factum that despite the

brother of the prosecutrix having informed the applicant that the marriage could not be solemnized without the consent of the parents of the applicant /

petitioner, sexual relations between the applicant / petitioner and the prosecutrix continued repeatedly several times over the period from the year 2009

to 2016, with the FIR having been got lodged only in the year 2016 when the applicant / petitioner was to be married on 25.11.2016, in the facts of the

case in the instant case and in view of the case law relied on behalf of the applicant / petitioner, it is considered appropriate and in the interest of

justice to release the applicant / petitioner on bail in the instant case subject to the applicant furnishing a personal bond in the sum of Rs.5,00,000/- with

one surety of the like amount to the satisfaction of the Trial Court and depositing of a sum of Rs.5 lakhs in the form of an FDR with the Registrar

General of this Court in the name of the prosecutrix / complainant in view of it having been submitted already on 11.12.2017 during the course of the

arguments in the present application that he would be willing to deposit the expenses incurred by the complainant, in the event of her production of bills

in relation to the engagement of the complainant with the applicant / petitioner qua which it is submitted by the learned counsel for the complainant that

the bills are in possession of the complainant, in view of the verification report on record in relation to the gold purchased and verified and also

transaction of the money allegedly made in relation to the dowry articles and also qua the sale of the land of Village Sukhasan, Madhepura, Bihar

belonging to the brother of the prosecutrix in the year 2016, which FDR is directed to be placed in an auto renewal mode, the release of which would

be subject to the outcome of the trial in the FIR No. 416/16, PS Mandawali under Sections 376/420/506/34 of the Indian Penal Code, 1860 and Section 4 of the Dowry Prohibition Act, 1961.

44. The applicant / petitioner further shall not leave the country without permission of the Trial Court.

45. Nothing stated hereinabove shall amount to an expression on the merits of the case.

46. The Trial Court Record, which has been requisitioned, be returned.