

(2023) 06 DEL CK 0035

In the Delhi High Court

Case No : Bail Application No. 780 Of 2022, Criminal Miscellaneous Application
No. 26639 Of 2022

Rishabh Rawat

APPELLANT

Vs

State Govt. Of Nct Of Delhi

RESPONDENT

Date of Decision : 01-06-2023

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 164, 439, 482
Indian Penal Code, 1860 — Section 375, 376, 377
Evidence Act, 1872 — Section 114A

Citation : (2023) 06 DEL CK 0035

Hon'ble Judges : Anup Jairam Bhambhani J

Bench : Single Bench

Advocate : Vipin Rana, Shiv Kumar, Shyamendra Kumar, Ritu, K.S. Verma,
Tarang Srivastava, Deepak Singh Thakur

Final Decision : Disposed Of

Judgement

Anup Jairam Bhambhani, J

1. By way of the present petition filed under section 439 read with section 482 of the Code of Criminal Procedure, 1973 ("Cr.P.C.") the petitioner seeks grant of regular bail in case FIR No. 550/2021 dated 07.09.2021 registered under sections 376/377 of the Indian Penal Code, 1860 ("IPC") at P.S.: Karol Bagh.

2. Notice on this petition was issued on 08.03.2022; consequent whereupon Status Report dated 23.04.2022 has been filed. Though no nominal roll was called for, the Investigating Officer (I.O.) confirms that the petitioner has been in custody from the day of his surrender before the trial court i.e., since 16.10.2021.

3. Chargesheet in the matter was filed on 10.12.2021; whereafter, on 07.03.2022 charges were framed against the petitioner under section 376 IPC only, and the petitioner was discharged for the offence under section 377 IPC.

4. Considering the nature of the matter, some of the hearings were conducted in-

camera.

5. The court has heard Mr. Vipin Rana, learned counsel appearing for the petitioner; as well as Mr. Tarang Srivastava, learned APP appearing for the State; as also Mr. Deepak Singh Thakur, learned counsel appearing for the prosecutrix in compliance of section 439(1A) Cr.P.C.

6. Mr. Rana submits, that the petitioner and the prosecutrix, both of whom are "major", were classmates, and were in a relationship for the last two years. It is submitted that the present case has only been foisted upon the petitioner since a proposal for the two marrying each other went awry.

7. Counsel further submits that there is considerable delay in filing the FIR, inasmuch as the FIR was filed on 07.09.2021, relating back to an alleged incident of 21.01.2021, as also another alleged incident of an unspecified date in May 2021. Counsel states that the second allegation of sexual intercourse in May 2021 is bereft of any specifics, since neither a date nor time as to when the incident occurred has been mentioned.

8. As regards the alleged incident of 21.01.2021, counsel submits that the petitioners CDRs show that on that day he was at his home in Baljeet Nagar, West Patel Nager, New Delhi from 6:20 a.m. to 2:58 p.m. and on-call with the prosecutrix. Furthermore, it is pointed-out that the distance between the homes of the petitioner and prosecutrix is about 03 kms, which makes it impossible for the petitioner to have been at the prosecutrix's house between 2:30 p.m. and 3:00 p.m., when the incident is alleged to have taken place.

9. Furthermore, learned counsel places reliance on the prosecutrix's MLC dated 07.09.2021, to show that during her medical examination, she admitted to the doctor that she had been in a relationship with the petitioner for the past 02 years.

10. Counsel has also drawn attention to the conduct of the parents of the parties as narrated in the FIR. It is submitted that the FIR records that after the second alleged incident in May 2021, the parents of the prosecutrix spoke to the parents of the petitioner and they (latter) promised to perform the marriage between the prosecutrix and petitioner at an appropriate time, after they complete their studies.

11. Counsel submits that there are no allegations of any physical assault during the alleged incidents; and apart from the oral testimony of the prosecutrix, there is no evidence against the petitioner. Counsel also submits that the behaviour of the prosecutrix and her mother is suspect, since they did not provide to the I.O. the phones they were using during the time of the incident, which phones contained crucial evidence to establish a consensual relationship between the two.

12. Counsel has also handed-up in sealed cover, certain WhatsApp chats between the petitioner and prosecutrix, and also photos of the petitioner and prosecutrix together, to evidence a prior consensual relationship between them.

13. Lastly, counsel submits that a mere breach of “promise to marry” does not constitute an offence of rape under sections 375/376 IPC. To that end, counsel relies on the decision of the Supreme Court in *Pramod Suryabhan Pawar vs. State of Maharashtra* (2019) 9 SCC 608, to urge that for it to comprise an offence, the promise of marriage must have been given in bad faith; and it must have immediate relevance to the decision to engage in the sexual act.

14. On the other hand, opposing the grant of bail, learned APP submits that the prosecutrix has been consistent in her allegations, and has supported the same in her statement recorded under section 164 Cr.P.C before the learned Magistrate, Tiz Hazari Courts, Delhi.

15. Learned APP argues, that the guilt of the petitioner is evident from certain WhatsApp chats between the petitioner and his friend, where it is submitted, the petitioner confesses to having committed the act. Learned APP submits that these chats are in the nature of an extra-judicial confession and may be relied upon as evidence against the petitioner. Upon query, Mr. Srivastava submits, that the FSL reports in relation to these chats is still awaited.

16. In support of the contention that an extra-judicial confession can be relied upon by the court, learned APP has placed reliance on a decision of the Supreme Court in *Chattar Singh vs. State of Haryana* (2008) 14 SCC 667, which cites another decision of the Supreme Court in *State of Rajasthan vs. Raja Ram* (2003) 8 SCC 180, to argue that extra-judicial confessions can be employed to convict an accused if they are “...voluntary and true and made in a fit state of mind “. Moreover, their value would be determined by “...the nature of the circumstances, the time when the confession was made and the credibility of the witnesses who speak to such a confession.”

17. Also opposing grant of bail, learned counsel for the prosecutrix supports the case of the State, to say that the prosecutrix has consistently reiterated her allegation of forcible sexual intercourse, and that she has not resiled from the three key aspects of the incidents, viz. that they were forcible, without her consent, and unnatural.

18. Counsel also submits, that since charge was framed under section 376 IPC, the presumption under section 114-A of the Indian Evidence Act 1872 will apply, and the court must therefore presume that the prosecutrix did not consent to the sexual act.

19. This court has given its careful consideration to the contents of the FIR, the chargesheet, and the submissions made by counsel as summarized above. In the opinion of this court, it is admitted that the petitioner and the prosecutrix were both “major” at the time of the alleged incidents, and also that they were in a romantic relationship with each other, which was also known to their families.

20. The extant position of law as to when a “promise to marry” is a “false promise” or a “breach of promise” is now settled by the Supreme Court in

Pramod Suryabhan Pawar (supra), wherein the Supreme Court has expounded the same in the following words :

"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. At the stage of considering a bail-plea however, it is neither appropriate nor feasible for the court to draw any conclusion, much less to return any finding, as to whether a promise of marriage made to a prosecutrix was false and in bad faith with no intention of being adhered to when it was given. This is also not the stage when the court must, or even can, finally decide if the purported false promise of marriage was of immediate relevance, or bore a direct nexus, to the prosecutrix's decision to engage in the sexual act. Such a finding or decision must await a thorough assessment and evaluation of evidence to be led by the parties at the trial. However, in the present case there appears to be no cavil that the parents of the petitioner as well as the prosecutrix were contemplating marriage between the two. It appears that the proposed marriage was awaiting the two of them completing their education. At this stage therefore, it can hardly be said with any conviction that the purported promise of marriage made by the petitioner to the prosecutrix was ex-facie false; and that it had been made in bad faith, with no intention of being adhered to when it was given. Considering the admittedly ongoing romantic relationship between the two, it also cannot be said with any certitude that the purported promise of marriage bore immediate relevance or direct nexus to the prosecutrix's decision to engage in the sexual act with the petitioner.

22. Furthermore in the present case, charge-sheet has been filed and charge has also been framed. The petitioner is stated to be a young man, about 20 years of age, and has been in judicial custody for the last about 01 year and 07 months.

23. In the seminal decision of the Supreme Court in *State of Rajasthan vs. Balchand* (1977) 4 SCC 308, Krishna Iyer, J. has propounded the "bail not jail" rule in the following words :

"2. The basic rule may perhaps be tersely put as bail, not jail, except where there are circumstances suggestive of fleeing from justice or thwarting the course of justice or creating other troubles in the shape of repeating offences or intimidating witnesses and the like, by the petitioner who seeks enlargement on bail from the Court..."

(emphasis supplied)

24. Upon a conspectus of the foregoing considerations, this court is persuaded to admit the petitioner/Rishabh Rawat s/o of Harish Singh Rawat to regular bail pending trial, subject to the following conditions :

24.1 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;

24.2 The petitioner shall furnish to the Investigating Officer/S.H.O 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;

24.3 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;

24.4 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

24.5 More specifically, the petitioner shall neither contact nor interact, whether directly or indirectly, with the prosecutrix or her family, in any manner whatsoever. The petitioner shall also not visit the locality in which the prosecutrix ordinarily resides.

25. Nothing in this order shall be construed as an expression of opinion on the merits of the pending matter.

26. A copy of this order be sent to the concerned Jail Superintendent forthwith.

27. The petition stands disposed-of in the above terms.

28. Other pending applications, if any, are also disposed-of.