



2024 : DHC : 3862



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

% *Date of Decision: 09<sup>th</sup> May, 2024*

+ **BAIL APPLN. 1142/2024**

SUMIT KUMAR

..... Applicant

Through: Mr. Shahid Azad, Mr. Fauzan Abbasi, Mr. Karandeep Singh and Ms. Ashna Sachdeva, Advs.

versus

STATE & ANR.

..... Respondents

Through: Mr. Ajay Vikram Singh, APP for the State with Mr. Arun Shukla and Mr. Shiva Vijaya Kumar, Advs. with SI Karishma Kanwat, PS Dwarka South and SI Mamta (Main IO). Mr. Harsh Hardy, Mr. Sachin Shukla and Mr. Ashwani Sharma, Advs. (for prosecutrix)

**CORAM:**

**HON'BLE MR. JUSTICE AMIT MAHAJAN**

**AMIT MAHAJAN (Oral)**

1. The present application is filed under Section 439 of the Code of Criminal Procedure, 1973 (CrPC), seeking regular bail in FIR No. 92/2024 dated 01.03.2024, registered at Police Station Dwarka South, for offences under Sections 376/506 of the Indian Penal Code, 1860 (IPC).



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2. The FIR was registered on a complaint dated 01.03.2024 given by the prosecutrix alleging that the applicant committed rape upon her on the pretext of marriage.
3. It is alleged that the applicant and the prosecutrix were acquainted since 2016 through their workplace. It is stated that the applicant and prosecutrix were engaged in a romantic relationship since 2019.
4. It is alleged that the applicant made physical relations with the prosecutrix on multiple occasions on the pretext that he wants to marry her, and it is alleged that on 23.11.2020, the applicant took the prosecutrix to an OYO hotel in Dwarka, Delhi, where he forced her to make physical relations.
5. In the year 2021, the prosecutrix discovered the applicant's alleged involvement with another woman, causing discord in their relationship. Despite this, the applicant allegedly made efforts to reconcile, but continued to evade marriage, citing various excuses, including religious differences and that the applicant's mother wants the prosecutrix and her entire family to convert to Islam, and only then she would be agreeable for their marriage. It is alleged that the applicant manipulated the prosecutrix, threatened her career, and coerced her into sexual acts.
6. It is further alleged that on 13.01.2024 when the prosecutrix asked the applicant for marriage then the applicant refused by saying unless the prosecutrix changes her religion the applicant will not marry her and if any complaint is filed against him then the applicant will kill the prosecutrix and her family.



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7. The learned counsel for the applicant submits that the applicant has falsely been implicated in the present case. He submits that the present criminal proceeding has been initiated with *mala fide* and dishonest intention to pressurize the applicant so as to evade the liability to pay back the amount which the applicant extended to the prosecutrix at different occasions. He submits that the applicant was arrested on 01.03.2024.

8. He submits that the prosecutrix introduced her sister to the applicant and both of them kept asking the applicant for money on one pretext or the other with a promise to repay the said amount, he submits that the applicant had given a total sum of ₹13,82,194/- (₹8,16,194/- to the prosecutrix and a sum of ₹5,66,000/- to the prosecutrix and her sister). He submits that apart from the online transfers the applicant had also given cash to the prosecutrix on multiple occasions and also was forced to clear her credit Card bills.

9. He submits that ultimately in October 2023, due to incompatibility the prosecutrix ended the relationship with the applicant with a promise to repay the applicant. He submits that the allegations with respect to the promise to marry and change of religion are baseless, since the applicant never asked the prosecutrix to change her religion and neither made any promise to marry and the same can be ascertained from the Whatsapp Chats of the relevant dates.

10. He submits that the allegations of rape under Section 376 IPC are completely baseless and false as per the chain of events narrated in the FIR. He further submits that the applicant and



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prosecutrix were in a mutually consenting relationship which ultimately ended in October 2023 at the instance of the prosecutrix herself.

11. He submits that there is delay of approximately three years in lodging of the present FIR since the alleged incident as per the FIR took place on 23.11.2020, when the applicant forced the prosecutrix to make physical relations with him. He submits that the present FIR was only lodged when the applicant on 07.02.2024 requested the prosecutrix to return the money.

12. He submits that the prosecutrix after their break up, started developing jealousy towards the applicant and his colleagues and on 13.01.2024 the prosecutrix in a drunken state misbehaved with the applicant and his colleagues by abusing them and threw glasses and used plates on them. The said incident was also reported to the office on 14.01.2024 by the applicant's colleagues.

13. The learned Additional Public Prosecutor for the State ('APP') along with learned Counsel for the complainant vehemently opposes the present bail application and submits that the allegations levelled against applicant are serious in nature and if the bail is granted to the applicant, he may threaten the prosecutrix or tamper with the evidence.

14. He further submits that during investigation victim counselling was conducted and her medical examination was conducted where she disclosed that applicant made physical relations with the complainant several times on the pretext of marriage.



15. The learned APP for the State submits that the prosecutrix in her statement given under Section 164 of the Cr.P.C has supported the case of the prosecution and the investigation is still pending in the present case.

16. I have heard learned Counsel for the parties.

17. It is not in dispute that the applicant and the prosecutrix had known each other since the year 2016 and were in a romantic relationship since the year 2019.

18. The learned Counsel for the applicant has shown and placed reliance on the What'sapp chats. It can be *prima facie* ascertained that the applicant and the prosecutrix even after the break up were in talking terms. *Prima facie* the present FIR appears to be the one which is lodged to settle the vendetta against the applicant, when the relationship between the two became sour. The long period of the relationship itself at this stage shows the alleged physical relationship was not made on the pretext of marriage.

19. While the victim has alleged that the applicant had threatened her, the delay in giving the complaint, at this stage, casts doubt on the veracity of the prosecution's case.

20. The Hon'ble Apex Court, in the case of ***Meharaj Singh (L/Nk.) v. State of U.P. : (1994) 5 SCC 188***, held as under:

*"12. ...Delay in lodging the FIR often results in embellishment, which is a creature of an afterthought. On account of delay, the FIR not only gets bereft of the advantage of spontaneity, danger also creeps in of the introduction of a coloured version or exaggerated story..."*

21. The applicant and the victim were, admittedly, in a



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consensual physical relationship without the marriage for a considerable period of time. Different reasons are alleged for the parties falling apart. It is alleged that in the year 2021, the prosecutrix discovered that the applicant was involved with other women. She, however, is stated to have been involved in physical relationship with the applicant for a considerable period of time after the year 2021.

22. The Hon'ble Apex Court in *Pramod Suryabhan Pawar v. State of Maharashtra & Anr. : (2019) 9 SCC 608*, quashed the FIR, noting that the complainant was aware that there existed obstacles in marrying the accused and still continued to engage in sexual relationship.

23. It is also relevant to note that no date or time of the alleged incident has been mentioned by the prosecutrix. A bald allegation has been made by the prosecutrix about the physical relations being established by the use of force by the applicant. The prosecutrix was a major at the time of the alleged incident. Whether the consent of the prosecutrix was vitiated by a misconception of fact arising out of a promise to marry cannot be established at this stage, and the same would be a matter of trial. It is evident to note that even after the alleged incident the prosecutrix and the applicant continued to be in a relationship.

24. The applicant was arrested on 01.03.2024, and the Chargesheet has already been filed, and the Trial is likely to take considerable amount of time. Any apprehension regarding the applicant tampering with the evidence or threatening the witnesses can be taken care of by imposing appropriate



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conditions.

25. Considering the totality of facts and circumstances, and without commenting further on the merits of the case, the present bail application is allowed; and the applicant is directed to be released on bail on furnishing a bail bond for a sum of ₹25,000/- with one surety of the like amount to the satisfaction of the learned Trial Court subject to the following terms and conditions:

- a. The applicant shall upon his release provide his mobile number to the concerned IO / SHO and keep it switched on at all times;
- b. The applicant shall not take unwarranted adjournment and attend the Trial Court proceedings on every date;
- c. The applicant shall not leave the Country without the permission of the learned Trial Court;
- d. The applicant shall not in any manner contact the complainant/victim or any of the witnesses;
- e. The applicant shall, upon his release, furnish a proof of residence where he shall reside upon his release to the concerned IO/SHO, and in the event of change in address he shall intimate the same to the concerned IO/SHO.

26. In the event of there being any FIR/DD Entry/complaint lodged against the accused/applicant, it would be open to the State to seek redressal by filing an appropriate application for cancellation of bail.

27. It is clarified that the observations made in the present



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judgement/order are for the purpose of deciding the present bail application, and should not influence the outcome of the Trial. The said observations should not be taken as an expression of opinion on the merits of the case.

28. The present application is allowed in the aforementioned terms.

**AMIT MAHAJAN, J**

**MAY 9, 2024**