

\$~29

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

+ BAIL APPLN. 2847/2022



..... Petitioner

Through: Mr. Wajeeh Shafiq and Mr. Mausumi
Mishra, Advocates

Versus

THE STATE GOVT. OF NCT OF DELHI & ANR. Respondents

Through: Mr. Manoj Pant, APP for the State
with SI Saroj Bala, P.S. Maidan Garhi

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

ORDER

%

22.09.2022

CRL.M.A. 19350/2022 (exemption)

1. Allowed, subject to all just exceptions.
2. Application stands disposed of.

BAIL APPLN. 2847/2022

3. The instant application under Section 439 of the Code of Criminal Procedure, 1973 ("Cr.P.C.") has been filed on behalf of the petitioner/applicant seeking regular bail in FIR bearing No. 283/2022, dated 16.07.2022, registered at Police Station Maidan Garhi, Distt. South Delhi, for offences punishable under Sections 376/323 of the Indian Penal Code, 1860 ("IPC").
4. Notice. Learned APP accepts notice for the State.
5. The allegations against the petitioner/applicant are that he and prosecutrix became friends in October 2020 and after a courtship period of almost a year, they got engaged on 11.10.2021 with the consent of their

family members. On 15.10.2021, the petitioner forcibly established physical relationship with the prosecutrix on the pretext that they were engaged to each other and would soon be getting married. On 30.12.2021, the petitioner, in intoxicated state, had mercilessly beaten the prosecutrix. On 29.01.2022, petitioner again established physical relationship with the prosecutrix without her consent which resulted in the pregnancy of the prosecutrix. It is further alleged that the prosecutrix was given pills by the petitioner to abort the pregnancy in February, 2022. Thereafter, on 09.06.2022, the petitioner again forcibly established physical relationship with the prosecutrix and upon prosecutrix questioning him as to when they would get married, she was beaten by the petitioner. On 09.07.2022, when the prosecutrix went to the house of the petitioner, he and his family members refused to solemnize the marriage, leading to the filing of present complaint on 16.07.2022.

6. In the present case, charge sheet has been filed on 16.09.2022.

7. Learned counsel for the petitioner submits that petitioner is in judicial custody since 16.07.2022. It is further submitted that refusal to marry the prosecutrix due to some reasons is the trigger point of filing of present FIR. It is further submitted by learned counsel that before registration of the present FIR, the prosecutrix on 05.06.2022 had given another complaint to the police against the petitioner on the ground of his refusal to marry her, but this complaint was withdrawn on the very next date i.e. 06.06.2022, and there were no allegations pertaining to sexual assaults/rape in the said complaint because of which the same was allowed to be withdrawn by the Police. Learned counsel for the petitioner further submits that the prosecutrix did not produce on record any documents relating to her

pregnancy or abortion. Learned counsel also refers to the judgment of Hon'ble Apex Court in the case of *Sonu @ Subhash Kumar v. State of Uttar Pradesh & Anr. 2021 SCC Online SC 181* wherein the Court has observed as under:

“8. The contents of the FIR as well as the statement under Section 164 of CrPC leave no manner of doubt that, on the basis of the allegations as they stand, three important features emerge:

(i) The relationship between the appellant and the second respondent was of a consensual nature;

(ii) The parties were in the relationship for about a period of one and a half years; and

(iii) Subsequently, the appellant had expressed a disinclination to marry the second respondent which led to the registration of the FIR.”

8. On the other hand, learned Additional Public Prosecutor for the State submits that charge sheet has been filed in the present case and the charges are yet to be framed. It is further submitted that the first bail application under Section 439 Cr.P.C. of the petitioner was dismissed by the learned Additional Sessions Judge, Special Fast Track Court, South District, Saket Courts *vide* order dated 12.08.2022 and the second bail application under Section 439 Cr.P.C. of the petitioner was also dismissed by learned Additional Sessions Judge-03 (South), Saket Courts, New Delhi *vide* order dated 07.09.2022. It is submitted by learned counsel that the allegations in the present case are serious in nature.

9. I have heard both learned counsel for petitioner as well as learned Additional Public Prosecutor for the State.

10. After perusing the material on record, including the statement of the prosecutrix under Sections 161 and 164 Cr.P.C. as well as the charge sheet,

this Court is of the opinion that the allegations levelled by the prosecutrix are serious in nature whereby she appears to have been sexually assaulted and raped on several occasions by the petitioner on false pretext of marriage. As far as reliance placed on the judgment of *Sonu @ Subhash Kumar (supra)* is concerned, in that case, the relationship between the prosecutrix and the accused was consensual in nature, whereas in the present case, a bare perusal of statement under 164 Cr.P.C. reveals the nature of physical relationship to be non-consensual.

11. Learned counsel for the petitioner had argued that since the parties were engaged, it cannot be said that there was false promise of marriage. However, in this Court's opinion, the argument has no force, since the mere fact of being engaged did not mean that the accused could have sexually assaulted, beaten or threatened the victim. The sexual relation on the first occasion was also, as per statement of the victim, on the pretext that they were soon to be married. The allegations of forcible abortion by administration of pills are very serious. A woman who was yet unmarried may not have kept the evidence of same for reasons to save her honour.

12. Thus, considering the seriousness of the offence, the nature of allegations and the fact that the charges have not been framed yet and trial is yet to commence, this is not a fit case for grant of bail.

13. Accordingly, the present bail application filed under Section 439 Cr.P.C. on behalf of the petitioner stands dismissed.

SWARANA KANTA SHARMA, J

SEPTEMBER 22, 2022/ns