

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

% **Reserved on : 09.02.2022**
Pronounced on : 24.05.2022

+ **BAIL APPLN. 3294/2021**

RITESH @ RITESH ANAND @ RITESH CHOUDHARY

.....Petitioner

Through: Mr. Pradeep Rana, Advocate with Mr. Abhishek Rana, Mr. Bharat Gupta, Mr. Ankit Rana and Mr. Nitish Pander, Advocates.

Versus

STATE AND ANR.

..... Respondents

Through: Ms. Rajni Gupta, APP for the State with SI Soni La, P.S.Rajinder Nagar. Ms. Anu Narula, Advocate for the complainant.

CORAM:

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

ORDER

RAJNISH BHATNAGAR, J.

1. This petition is filed by petitioner under Section 439 of the Code of Criminal Procedure, 1973, seeking regular bail in FIR No. 237/2020 under Sections 328/509/376/354/506/34 IPC registered at Police Station Rajinder Nagar, Delhi.

2. As per the case of the prosecution, on 10.11.2020, the present FIR was registered on the complaint of the prosecutrix alleging that she had come to Delhi to prepare for UPSC Civil Services Examinations, and was staying for the said purpose at Rajinder Nagar. The prosecutrix met the petitioner who was also a UPSC aspirant. It is alleged that on 19.9.2019 the petitioner took her to his room at 9/11, Old Rajinder Nagar, Delhi and served her cold drink, and after consuming the same, she felt unconsciousness and it is alleged that petitioner raped her. It is further alleged that when the prosecutrix regained her consciousness, she felt pain in her private parts, and on being asked by the petitioner as to what had happened, the petitioner told her that he would marry her. It is further alleged that after sometime the prosecutrix got pregnant and the petitioner asked her to terminate the pregnancy, and also threatened her that he had made video of the act, and if the prosecutrix would complaint to the police he would make the video viral. It is alleged that on the pretext of making video viral, the petitioner made further physical relations with her.

3. I have heard learned counsel for the petitioner, learned APP for the State, and learned counsel for the prosecutrix/complainant.

4. It is submitted by the counsel for the petitioner that petitioner has been falsely implicated, and the prosecutrix is a matured lady preparing for the UPSC Examination, and was well aware about the consequences of her acts. It is further submitted that relations were consensual in nature, and the present FIR has been lodged by the prosecutrix just to extort and harass the

petitioner. It is further submitted that petitioner had transferred money to the tune of Rs. 2 lacs in the account of the prosecutrix to help her financially on her request, which can be verified from the bank account. It is further submitted that the prosecutrix has filed false cases against other persons also. It is further submitted that it is highly improbable that by drinking same cold drink, the prosecutrix became unconscious and nothing happened to the petitioner. It is further submitted by the counsel for the petitioner that initially the petitioner had made up his mind to marry the prosecutrix out of love and friendship but after some time he became fishy and enquired about the character of the prosecutrix and came to know about her murky background, and also that the prosecutrix is habitual in making false criminal complaints against persons who do not bow to her extortion demands. It is further submitted that the prosecutrix has got registered the FIR bearing no. 01/2018 under Section 376(2)(i)(M)/506 IPC against Sanket Rajesh Kambe registered at P.S.Mautizapur (Gramin), Akola, Maharashtra. It is further submitted that prosecutrix has also lodged a vindictive complaint against four teachers under Sections 376/377/417/504/506 IPC read with Section 65/67 IT Act when she was caught cheating in Examination and the prosecutrix has also filed a complaint against the police officer under Section 294/506 IPC. It is further submitted that when the petitioner realized that prosecutrix had interest in getting the money from him, then the petitioner filed complaints to National Commission for Woman and Delhi Police on 28.08.2020, and FIR was registered against the prosecutrix under Section 420/384/389/506(2) IPC. It is further submitted by the counsel for

the petitioner that whatsapp chats and photographs placed on record would show that the relations were consensual in nature.

6. Counsel for the petitioner has relied upon the following judgments:

- (a) ***Sonu @ Subhash Kumar Vs. State of Uttar Pradesh and Anr. Crl. Appeal No. 233/2021 (Arising out of SLP (Crl) No. 11218/2019);***
- (b) ***Dr. Dhruvaram Murlidhar Sonar Vs. The State of Maharashtra and Ors. Crl. Appeal No. 1443/2018 arising out of SLP (Crl) No. 6532/2018;***
- (c) ***Akshay Manoj Jaisinghani Vs. The State of Maharashtra (Bombay High Court), Bail Appln. No. 2221/2016;***
- (d) ***Deepak Gulati Vs. The State of Haryana Crl. Appeal No. 2322/2010 (Supreme Court);***
- (e) ***Rohit Chauhan Vs. The State of NCT of Delhi, Bail Appln. No. 311/2013;***
- (f) ***Nirmal Vaid Vs. State of NCT of Delhi Bail Appln. 1760/2012 and***
- (g) ***Kishan Singh (D) Thru LRs. Vs. Gurpal Singh and Ors. Crl. Appeal No.1500/2010 (Arising Out of SLP (Crl) No. 5440/2009.***

7. On the other hand, it is submitted by learned APP for the State assisted by the counsel appearing for the complainant that on 19.09.2019, when the offence was committed for the first time, the accused had himself taken a little bit of cold drink in order to instill confidence in the prosecutrix and thereafter the prosecutrix without doubting the intentions of the petitioner drank the entire cold drink, after which she became unconscious and was raped by the petitioner. It is further submitted that when the

prosecutrix confronted the petitioner, then in order to save himself from any further action he gave a promise that he would marry her. It is further submitted that the petitioner has also made her video on 19.9.2019, and on the pretext of making it viral he again made physical relations with her. It is further submitted that prosecutrix has returned most of the money which she had borrowed from the petitioner. It is further submitted by learned APP that petitioner was aware about the previous FIR lodged by the prosecutrix for similar offence, and therefore, the petitioner took advantage of the prosecutrix during her weak moments of emotions. It is further submitted by the learned APP that the allegations are grave and serious in nature, and the prosecutrix has even supported the case in her statement under Section 164 Cr.P.C. It is further submitted that this is simply not a case of false promise of marriage rather before making any promise to marry the petitioner has already established physical relationship with the prosecutrix without her consent.

8. I have gone through the judgments relied upon by the counsel for the petitioner but the same are not applicable to the facts and circumstances of the case. In this case, physical relations were allegedly made first, and subsequently there was a promise to marry which also did not fructify. It has also been contended by the counsel for the petitioner that there is delay of one year and two months in recording the FIR which makes the case of the prosecutrix unreliable. On the other hand, it is submitted by the learned APP for the State that delay in lodging the FIR is not always fatal to the case of

the prosecution especially in sexual offence as the victim/her parents and family members have to bear with that trauma and to decide amongst themselves what action is to be taken.

9. In the instant case, according to the prosecutrix the physical relations were made for the first time on 19.9.2019 by the petitioner by spiking the drink of the prosecutrix as alleged by her. A bare perusal of the FIR shows that victim, starting from 19.9.2019 and till the registration of the FIR i.e 10.11.2020 has explained in a very detailed and graphic manner the sequence of events which took place between the said period and when nothing materialized in the relationship then she had no option but to get the present FIR registered.

10. As far as the question of delay in registration of FIR and whether events mentioned by the victim between the said period are true and false, cannot be decided in this bail application, as the same are matter of trial, and the testimony of the victim is yet to be recorded.

11. As far as the contention of the learned counsel for the petitioner that relationship between the prosecutrix and the petitioner was consensual in nature, and the petitioner always wanted to marry the prosecutrix is concerned, the prosecutrix in her statement given to the police as well as in her statement recorded under Section 164 Cr.P.C has categorically stated that they were friends and only after the incident of 19.9.2019, when the petitioner made sexual relations with her when she was unconscious, only then he had stated that he would marry her. As per the prosecutrix, the

petitioner further established sexual relations even thereafter with her by threatening her that he would viral her video. It is also the contention of the counsel for the petitioner that prosecutrix has lodged an FIR against one person and she is a habitual extortionist.

12. As far as the question of similar FIR is concerned, that cannot be a ground to discredit the prosecutrix or her statement made in the instant case. As far as truthfulness of the statement is concerned, that is a matter of trial. It has also been argued by the learned counsel for the petitioner that petitioner has given more than Rs. 2 lacs in the account of the prosecutrix on her asking. But according to the prosecutrix the same has mostly been returned. This issue also cannot be decided in this bail application, however, this alone does not show that relations were consensual and giving of loan of any amount does not further the case of the petitioner. Counsel for the petitioner has also during the course of arguments drawn the attention of this Court to the whatsapp chat between the parties. A perusal of the whatsapp chats shows that the parties were on talking terms, and were friendly which is also admitted case of the prosecution but in my opinion that does not mitigate the allegations made by the prosecutrix against the petitioner in her statement under Section 164 Cr.P.C, and first statement given to the police.

13. As far as the question of the petitioner having been released on interim bail is concerned, the same also does not entitle the petitioner to grant of regular bail, as the interim bail was granted to the petitioner on the specific grounds which were raised in his interim bail application and the

allegations against the petitioner were not considered at that time and there was no discussion on merits. Therefore, no ground for regular bail is made out at this stage, the bail application is accordingly dismissed.

14. Nothing stated herein above shall tantamount to the expression of any opinion on the merits of this case.

MAY 24 , 2022/ib

RAJNISH BHATNAGAR, J

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