

**HIGH COURT OF DELHI****Bench: Justice Anoop Kumar Mendiratta****Date of Decision: 22<sup>nd</sup> January 2024****BAIL APPLN. 4256/2023****ARMAAN KHAN ...PETITIONER****VERSUS****STATE OF NCT OF DELHI ...RESPONDENT****Legislation:**

Sections 376, 506 of the Indian Penal Code, 1860

Section 438 of the Code of Criminal Procedure, 1973

**Subject:** Application for anticipatory bail in connection with FIR alleging rape under the pretext of marriage and criminal intimidation.**Headnotes:**

Bail Application – Grant of Anticipatory Bail – FIR for Offences under IPC Sections 376/506 – Petitioner’s Application for Anticipatory Bail in FIR No.532/2023 [Para 1-2, 7-8]

Prosecution Case – Allegation of Sexual Relationship on Promise of Marriage – Complainant’s Allegations of Physical Relations Under Pretext of Marriage [Para 2]

Petitioner’s Submission – Consensual Physical Relationship, No Custodial Interrogation Required – Reference to Similar Past Allegations Against Petitioner, Citing Various Precedents [Para 3]

Opposition by State and Complainant/Prosecutrix – Misrepresentation of Consent for Physical Relationship Based on Marriage Assurance [Para 4]

Court’s Analysis – Consent Obtained by Misrepresentation, Consideration of Surrounding Facts and Circumstances – Complainant Aware of Potential Marriage Difficulties Due to Religious Differences [Para 5-6]

Decision – Grant of Anticipatory Bail with Conditions – Personal Bond of Rs.50,000 with Surety, Restrictions on Movement and Contact with Witnesses or Complainant [Para 8]

**Referred Cases :**

- Ansaar Mohammad v. State of Rajasthan, Criminal Appeal No.962 of 2022 {@ SLP (Cr.) No.5326 of 2022} decided on 14.07.2022.
- Mukesh Kumar Singh v. State of Rajasthan & Anr., @ SLP (Cr.) No.9365 of 2021 decided on 01.12.2022.

- Sushant Kumar v. The State, Bail Application No.2923/2023 decided by Delhi High Court on 20.10.2023.
- Kanwar Nitish alias Nitish Kanwar v. State of NCT of Delhi, Bail Application No.2125/2023 decided by Delhi High Court on 12.07.2023.
- Vivek Kumar Yadav v. State & Anr., Crl M.C. 1034/2021 & Crl. M.As. 5259-60/2021 decided by Delhi High Court on 28.04.2021.
- Binay Kumar Chauhan v. State (NCT of Delhi), Bail Application No.2060/2020 decided by Delhi High Court on 12.11.2020.
- Jagdish Nautiyal v. State, 2014 (12) RCR (Criminal) 2991 decided on 29.11.2012.
- Gulab v. State of Maharashtra, Crl. Appl. (ABA) No.21/2022 decided by High Court of Judicature at Bombay, Nagpur Bench on 18.01.2022.
- Mandar Deepak Panwar v. State of Maharashtra, Criminal Appeal No.442/2022 decided on 27.07.2022.
- Sonu @ Subhash Kumar v. State of Uttar Pradesh, Crl. Appeal No.233 of 2021 {@ SLP (Crl.) No.11218 of 2019} decided on 01.03.2021.
- Uday v. State of Karnataka, 2003 AIR (SC) 1639.
- Deelip Singh @ Dilip Kumar v. State of Bihar, 2005 AIR (SC) 203.

**Representing Advocates:**

**Mr. L.K. Verma, Mr. Mohit Verma, Mr. Hritik Verma, Mr. Sanket Khandelwal for Petitioner**

**Ms. Meenakshi Dahiya, APP for State; Mr. Ajay Kumar Yadav, Ms. Yogita Sharma, Ms. Piyushi Garg for Complainant/Prosecutrix.**

**CORAM:**

**HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA**

**ORDER**

**ANOOP KUMAR MENDIRATTA, J.**

1. An application under Section 438 of the Code of Criminal Procedure, 1973 (Cr.P.C.) has been preferred on behalf of the petitioner for grant of anticipatory bail in FIR No.532/2023 under Sections 376/506 of Indian Penal Code, 1860 (IPC) registered at PS: Maidan Garhi, Delhi.

2. In brief, as per the case of the prosecution, complainant alleged that in August, 2023 she had met the petitioner through her friend 'V' who resides

at Gurgaon. On the assurance of the petitioner that he loved the complainant and would marry her, he took her to Hotel Udman on 02.09.2023 and established physical relations on the pretext of marriage. In the evening of 02.09.2023, petitioner again took the complainant to Hotel Rivasa and established physical relations. Thereafter, physical relations were again established on 24.09.2023 at Hotel Rivasa. On 19.10.2023, petitioner called the complainant to meet but did not come. Thereafter, complainant reached the house of petitioner, wherein Anwar Khan (brother of the petitioner) threatened her. FIR No.532/2023 was accordingly lodged on the complaint of the complainant on 20.10.2023 and formal investigation was conducted.

It is further the case of the prosecution that during investigation, complainant/prosecutrix also produced two affidavits which were procured for the purpose of solemnization of marriage.

3. Learned counsel for the petitioner submits that during the interim protection granted by learned ASJ, petitioner has already joined the investigation and is not required for custodial interrogation. Petitioner is further stated to be a victim of sextortion since earlier also the complainant had lodged similar complaints including against one Abhishek Chauhan, with whom the matter was settled for Rs.57,000/-. It is further submitted that petitioner had met the complainant in a midnight pub at Gurgaon and the physical relationship was consensual without any assurance of marriage.

It is further submitted that the complainant had duly known that petitioner is a Muslim guy and there could be difficulties in any marriage proposal, as alleged by the complainant. Signatures of the petitioner are stated to have been forcibly obtained on the affidavit, by emotionally blackmailing him. Reliance is further placed upon ***Ansaar Mohammad v. State of Rajasthan, Criminal Appeal No.962 of 2022*** {@ SLP (Crl.) No.5326 of 2022)} decided on 14.07.2022; ***Mukesh Kumar Singh v. State of Rajasthan & Anr., @ SLP (Crl.) No.9365 of 2021*** decided on 01.12.2022; ***Sushant Kumar v. The State, Bail Application No.2923/2023*** decided by Delhi High Court on 20.10.2023; ***Kanwar Nitish alias Nitish Kanwar v. State of NCT of Delhi, Bail Application No.2125/2023*** decided by Delhi High Court on 12.07.2023; ***Vivek Kumar Yadav v. State & Anr., Crl M.C. 1034/2021 & Crl. M.As. 5259-60/2021*** decided by Delhi High Court on 28.04.2021; ***Binay Kumar Chauhan v. State (NCT of Delhi), Bail Application No.2060/2020*** decided by Delhi High Court on 12.11.2020; ***Jagdish Nautiyal v. State, 2014 (12) RCR (Criminal) 2991*** decided on

**29.11.2012; *Gulab v. State of Maharashtra*, Crl. Appl. (ABA) No.21/2022 decided by High Court of Judicature at Bombay, Nagpur Bench on 18.01.2022; *Mandar Deepak Panwar v. State of Maharashtra*, Criminal Appeal No.442/2022 decided on 27.07.2022; *Sonu @ Subhash Kumar v. State of Uttar Pradesh*, Crl. Appeal No.233 of 2021 {@ SLP (Crl.) No.11218 of 2019} decided on 01.03.2021; *Uday v. State of Karnataka*, 2003 AIR (SC) 1639 and *Deelip Singh @ Dilip Kumar v. State of Bihar*, 2005 AIR (SC) 203.**

4. The application is vehemently opposed by learned APP for the State along with learned counsel for the complainant/prosecutrix and it has been submitted that consent of the complainant for sexual relationship was purportedly obtained by the petitioner on the assurance of marriage. Further, only on the said assurance and misrepresentation, the complainant had repeatedly submitted to the physical relationship.

5. I have given considered thought to the contentions raised.

There can be no dispute to the proposition of law that a consent which is obtained by misrepresentation is 'no consent' at all. For the purpose of considering the question of consent, the facts, surrounding circumstances and duration of association between the parties need to be considered to ascertain whether the consent was voluntary or was given under misconception of fact. 6. This is not a case wherein the petitioner had misrepresented about his background or concealed any other particulars. The case is simply based on the fact that the complainant entered into physical relationship with the petitioner on the assurance of marriage. However, repeated sexual encounters allegedly appear to have taken place within a short period of time and when the complainant realized that same would not end into any meaningful relationship by way of marriage, the present FIR stands registered. The fact cannot be ignored that the complainant being aged about 24 years must have understood the consequences of her acts and was conscious of the fact that marriage proposal, if any, may face difficulties since the complainant and petitioner belong to different religions.

7. The factum of consent does not require any custodial interrogation and can be appropriately deciphered during the course of trial after the evidence of the complainant is led on record. Petitioner is stated to have already joined the investigation during the period he was given interim protection by the learned Trial Court. Merely because the police has initiated the process under Section 82 Cr.P.C. since the interim protection stands

withdrawn in view of dismissal of application for anticipatory bail by the learned Trial Court, cannot be a ground for denying the benefit of anticipatory bail to the petitioner.

**8.** Having regard to the facts and circumstances of the case, in the event of arrest, petitioner be admitted to bail on furnishing a personal bond in the sum of Rs.50,000/- (Rupees Fifty Thousand Only) with one surety in the like amount to the satisfaction of IO/SHO concerned and subject to following conditions:

- (i) Petitioner shall join the investigation as and when directed by the IO;
- (ii) Petitioner shall not leave NCT of Delhi without prior permission of the learned Trial Court/concerned M.M.;
- (iii) Petitioner shall not influence the witnesses in any manner or try to contact the complainant or tamper with the evidence.

**9.** Application is accordingly allowed. Nothing stated hereinabove shall tantamount to an expression of opinion on the merits of the case.

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