

HIGH COURT OF DELHI

CORAM: HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

Date of Decision: 30.01.2024

BAIL APPLN. 264/2024

KUSHAL KUDESIA ...PETITIONER

VERSUS

STATE OF NCT OF DELHI & ANR. ...RESPONDENTS

Legislation:

Section 438 of the Code of Criminal Procedure, 1973 (Cr.P.C.)

Section 376 of the Indian Penal Code, 1860 (IPC)

Subject: Application for anticipatory bail in a case involving alleged sexual assault under the pretext of marriage.

Headnotes:

Anticipatory Bail Application – Rejection of anticipatory bail for FIR No. 485/2023 under Section 376 IPC – Accused seeking bail for alleged offences of rape under the pretext of marriage – Bail applications previously rejected by Sessions Court and High Court due to serious allegations and non-joining of investigation by the accused. [Para 1, 7-8]

Relationship and Consent – Allegations of physical relations under false promise of marriage – Complainant's claim of being misled into a relationship and pregnancy, followed by abortion – Accused's subsequent marriage with complainant post-rejection of earlier bail applications, questioned for genuineness. [Para 2, 4, 5, 8]

Accused's Defense – Claims of miscommunication and misunderstanding between the parties – Argument of a consensual relationship leading to recent marriage – Defense of settling disputes and marrying the complainant not accepted due to serious nature of allegations and accused's evasion from investigation. [Para 3, 8-9]

Bail Considerations – Court's evaluation of bail based on nature of allegations, conduct of accused, and lack of cooperation in investigation – Recent marriage of accused and complainant not deemed a sufficient ground

for granting bail in the context of serious allegations and accused's prior non-compliance. [Para 8-9]

Decision – High Court's decision to reject the anticipatory bail application – Emphasis on accused's evasion from investigation and need for ascertaining true facts of the case – Court's denial of bail application without prejudice to merits of the case. [Para 9-11]

Referred Cases: None.

Representing Advocates:

Petitioner: Mr. Piyush Singhal, Mr. Kunal Malhotra, Mohd. Asif, Mr. Paras Khurana, Mr. Lalit Chaudhary

Respondents: Mr. Naresh Kumar Chahar, APP for the State

JUDGMENT SWARANA KANTA SHARMA, J.

1. The present application under Section 438 of the Code of Criminal Procedure, 1973 ('Cr.P.C.') has been filed on behalf of the applicant seeking grant of anticipatory bail in case FIR No. 485/2023, registered at Police Station Amar Colony, Delhi, for offences punishable under Sections 376 of the Indian Penal Code, 1860 ('IPC').
2. Briefly stated, the facts as alleged are that the complainant knew the accused/applicant since 2018. It is stated that the complainant was in relationship with him and he had established physical relations with her at his rented accommodation in Delhi on the false pretext of marriage. It is stated that the accused had even introduced her to his family members and had assured her of marriage and on the pretext of such false promise, he had continued to maintain physical relations with her. The complainant had got pregnant in the month of October, 2020. It is stated that when the complainant had asked accused to get married to her, he had told her that he needed more time for getting married and, therefore, she had undergone abortion. It is stated that the accused had kept promising the complainant that he will marry her, however, in May, 2023, the applicant had refused to marry the complainant. It is stated that when complainant had tried to speak to his family members, even they had misbehaved with her and the accused had left the rented accommodation for an undisclosed address and had stopped responding to her phone calls. On these allegations, the present FIR was registered.

3. Learned counsel for the accused/applicant argues that in the present case, FIR has been registered under Section 376 of IPC on the basis of a false complaint lodged by the complainant. It is argued that the applicant apprehends being arrested in the present FIR which was filed because of miscommunication and misunderstanding between the applicant and the complainant, who have been in a relationship for almost 5-6 years. It is also argued that the complainant had herself developed relationship with the applicant and therefore no case is made out against the applicant/accused. It is stated that after the registration of the FIR, the applicant was able to get in touch with the complainant and thereafter, they have sorted out all the differences between them and with the blessings of their elders, they have now got married to each other on 12.01.2024 as per Hindu rites and rituals.
4. *Per contra*, learned APP for the State argues that the allegations against the accused are serious in nature. It is also stated that the present case was registered on the complaint of Ms. 'X' wherein she had alleged that she knew the accused since 2018. It is also stated that the complainant was in relationship with him and he had established physical relations with her at his rented house in Delhi on the false pretext of marriage. He had continued to establish physical relations with her and she had got pregnant in the month of October, 2020. It is submitted that the conduct of the accused is noteworthy since after his bail applications were rejected thrice by the Courts, the marriage was solemnized with the sole aim of securing favourable order from this Court. Therefore, in these circumstances, it is prayed that anticipatory bail application of accused/applicant be rejected.
5. Today, the complainant appears in person and states that after the last anticipatory bail application of the accused was rejected by this Court on 12.12.2023, the parties had got married on 12.01.2024, i.e. 10 days back and therefore bail be granted to the accused. The complainant also states that throughout since and prior to filing of the FIR, there were some negotiations regarding marriage between the parties and therefore, now since they are married, bail be granted to the accused.
6. This Court has heard arguments addressed by learned counsel for applicant and learned APP for the State, and has gone through the case file.
7. In the present case, this Court notes that earlier, the anticipatory bail applications filed by the present accused/applicant were rejected by the learned Sessions Court as well as by this Court vide orders dated 04.12.2023 and 12.12.2023 respectively. The accused did not join investigation and now after his bail applications were rejected, he again approached the learned

Sessions Court with a plea that he be granted anticipatory bail as he now has decided to marry the complainant within a period of one year. The said plea was rejected by the learned Sessions Court vide order dated 11.01.2024 on the ground that accused had now taken a completely different stand and there was no mechanism to check genuineness of such plea or voluntariness of complainant to marry the accused.

8. Having considered the records of the case, this Court is of the opinion that the bail applications for grant of anticipatory bail were rejected by the Sessions Court on 04.12.2023 and by this Court on 12.12.2023 and throughout this period, the complainant was appearing before the Court and opposing the bail application on the ground that there are serious allegations against the accused including those of forcibly aborting the child conceived by her due to physical relations between the parties. The accused throughout this period has been absconding and did not join investigation. If it was a case of the parties that throughout this period, they were still in negotiation about marriage between them, this was neither disclosed by the accused nor by the complainant in their submissions made before this Court. The accused has still not joined investigation and had allegedly married the complainant a few days back, on 12.01.2024, i.e. after 20 days of rejection of his anticipatory bail application by this Court and one day after his bail was rejected by the learned Sessions Court. Thus, instead of joining investigation and bringing the true facts before the I.O. or this Court, the accused has absconded.
9. Considering the same, this Court finds no ground to grant anticipatory bail to the present accused/applicant since the factum of marriage and the real reason for marriage is still to be ascertained by the police/investigating agency. The sole ground of getting married a few days back, when there are serious allegations in the FIR, and the fact that the accused has still not joined investigation, no ground for grant of anticipatory bail is made out.
10. Accordingly, the present application stands rejected.
11. Nothing expressed hereinabove shall tantamount to an expression of opinion on the merits of the case. 12. The judgment be uploaded on the website forthwith.

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