

**Court No. - 75**

**Case :-** APPLICATION U/S 482 No. - 4497 of 2021

**Applicant :-** Ravi Kumar Bharti @ Bittu

**Opposite Party :-** State Of U.P. And Another

**Counsel for Applicant :-** Anil Kumar Rajak, Prem Shanker Prasad

**Counsel for Opposite Party :-** Ajay Kumar Rai, Atul Kumar Dubey, Binod Kumar Mishra, Daya Shankar, G.A., Mahendra Kumar Mishra

**Hon'ble Mrs. Manju Rani Chauhan, J.**

1. Counter affidavits have been filed by learned counsel for opposite party no.2 on 26.10.2023 and learned AGA for the State on 01.09.2021. Till date, no rejoinder affidavit has been filed.

2. Learned counsel for the applicant does not propose to file any rejoinder affidavit.

3. Heard Mr. Anil Kumar Rajak, learned counsel for the applicant, Mr. Ajay Kumar Rai, learned counsel for opposite party no.2 as well as Mr. D.P. Singh, learned A.G.A. for the State and perused the entire material available on record.

4. The present 482 Cr.P.C. application has been filed to quash/stay the impugned Non-Bailable Warrant dated 25.06.2020 issued by the Chief Judicial Magistrate, Gautam Budh Nagar, as well as further proceeding of Criminal Case No.8823 of 2019 (State vs. Ravi Kumar @ Bharti), under Sections 376 and 313 I.P.C., Police Station- Phase-III, District- Gautam Budh Nagar, pending before the Chief Judicial Magistrate, District- Gautam Budh Nagar, arising out of Case Crime No.75 of 2019, under Sections 323, 504, 506, 313 and 376 I.P.C., Police Station- Phase-III, District- Gautam Budh Nagar.

5. Brief facts of the case are that, an FIR was lodged on 15.01.2019 at 09:50 hours, under Sections 323, 504, 506, 313 and 376 I.P.C. by Nidhi Kumari against six named accused including the applicant with the allegations that nearly 3-5 years ago, Bharti alias Bittu Kumar (applicant) became friendly with the informant through social network. They started their conversation on

Facebook and Whatsapp. The applicant proposed to marry the informant to which she gave consent. They used to meet each other at different places. It has further been alleged that after persuading the victim, the applicant established physical relationship with her. At one point of time, the informant became pregnant and the applicant offered her some medicine to get the pregnancy aborted. He also promised that despite the aforesaid, he will marry the victim (informant). It is further alleged that in between, the informant came to know that the applicant was friendly with other girls and was trapping them also. When the victim requested the applicant to change his course, he threatened her for dire consequences. Later the informant (victim) became pregnant for the second time with the applicant's child. By confusing and blackmailing her emotionally, the second pregnancy was also terminated. As on being convinced by the applicant, the victim got the child aborted at S.G.M. Hospital, Noida.

6. Despite the aforesaid activities, when the applicant did not perform marriage with the informant, she went to the applicant's house where all the family members of the applicant abused her and demanded Rs.10,00,000/- dowry. She was also beaten by his family members and they stated that without dowry, they will not perform her marriage with the applicant, therefore, the present FIR has been lodged. After investigation charge sheet has been submitted on 17.05.2019 on which cognizance has been taken by the court concerned. Subsequently, N.B.W. has also been issued against the applicant on 25.06.2020. Challenging the aforesaid, the present application has been filed.

7. Learned counsel for the applicant submits that the relationship between the applicant and the victim is consenting, therefore, no offence under Section 376 I.P.C. is made out against the applicant. In support of his submission, he has relied upon a judgment passed by Co-ordinate Bench of this Court in the ***Application U/S 482 No.17190 of 2020 (Anuj Chaudhary Alias Neeraj vs. State of U.P. and Another) decided on 18.10.2022***, wherein it has been held that where the relation between the applicant and the victim is consensual for about 10 years and they have established physical relationship on number of occasions, lived as husband & wife and later the applicant does not marry the victim, an FIR is lodged, therefore, as held in *Sonu @ Subhash Kumar vs. State of U.P.* reported in AIR 2021 SC 1405 and *Pramod Suryabhan Pawar vs. State of Maharashtra and Another* reported in 2019 (2) SCCrJ 424 (SC) as well as *Shambhu Kharwar vs. State of U.P.* reported in 2022 SSC Online SC 1032, no offence under the relevant sections is made out.

8. He further submits that perusal of the version of FIR as well as statements recorded during investigation, it is not proved that the promise to marry was false or the complainant entered into sexual relationship on such promise and the marriage could not be materialized between the two, therefore, no offence under Section 376 I.P.C. is attracted against the applicant. He pointed out certain documents and statements in support of his contention. He, therefore, submits that the N.B.W. order as well as entire proceedings be quashed by this Court as the same is an abuse process of Court.

9. On the other hand, learned counsel for the opposite party no.2 as well as learned AGA for the State submit that in the present facts of the case, as per the contents of the FIR as well as statement of the victim, a false allurements of marriage is proved as the applicant was entangled with other girls and despite the victim being pregnant twice, the child was aborted under pressure of the applicant which itself proves that the promise of the applicant to marry the victim was false. Thus, the judgments as relied upon by the learned counsel for the applicant are not applicable in the present case. He further submits that the victim is repeatedly sexually exploited on the allurements of marriage and she was pregnant twice and aborted under pressure and after investigation, charge sheet has been submitted by the police against the applicant in the aforesaid offences. Thus, the allegations are prima facie made out. Therefore, no interference is required by this Court.

10. I have considered the submissions made by the learned counsel for the parties and have gone through the records of the present application.

11. This Court finds that the submissions made by the applicants' learned counsel call for adjudication on pure questions of fact which may adequately be adjudicated upon only by the trial court and while doing so even the submissions made on points of law can also be more appropriately gone into by the trial court in this case. The issue whether it is appropriate for this Court being the Highest Court to exercise its jurisdiction under Section 482 Cr.P.C. to quash the charge-sheet and the proceedings at the stage when the Magistrate has merely issued process against the applicants and trial is to yet to come only on the submission made by the learned counsel for the applicants that present criminal case initiated by opposite party no.2 are not only malicious but also abuse of process of law has elaborately been discussed by the Apex Court in the following judgments:-

- (i) *R.P. Kapur Versus State of Punjab*; AIR 1960 SC 866,
- (ii) *State of Haryana & Ors. Versus Ch. Bhajan Lal & Ors.*; 1992 Supp.(1) SCC 335,
- (iii) *State of Bihar & Anr. Versus P.P. Sharma & Anr.*; 1992 Supp (1) SCC 222,
- (iv) *Zandu Pharmaceuticals Works Ltd. & Ors. Versus Mohammad Shariful Haque & Anr.*; 2005 (1) SCC 122,
- (v) *M. N. Ojha Vs. Alok Kumar Srivastava*; 2009 (9) SCC 682,
- (vi) *Mohd. Allauddin Khan Vs. The State of Bihar & Others*; 2019 0 Supreme (SC) 454,
- (vii) *Nallapareddy Sridhar Reddy Vs. The State of Andhra Pradesh & Ors.*; 2020 0 Supreme (SC) 45, and lastly
- (ix) *Rajeev Kaurav Vs. Balasahab & Others*; 2020 0 Supreme (SC) 143.

12. In the present facts of the case, as per the contents of the FIR as well as statement of the victim, a false allurements of marriage is proved as the applicant was entangled with other girls and despite the victim being pregnant twice, the child was aborted under pressure of the applicant which itself proves that the promise of the applicant to marry the victim was false.

13. In the case of *Anurag Soni v. State of Chhattisgarh*; reported in (2019) 13 SCC 1, the Apex Court has held as under:-

"14. Considering the aforesaid facts and circumstances of the case and the evidence on record, the prosecution has been successful in proving the case that from the very beginning the accused never intended to marry the prosecutrix; he gave false promise to the prosecutrix to marry her and on such false promise, he had physical relation with the prosecutrix; the prosecutrix initially resisted, however, gave the consent relying upon the false promise of the accused that he will marry her and, therefore, her consent can be said to be a consent on misconception of fact as per Section 90 IPC and such a consent shall not excuse the accused from the charge of rape and offence under Section 375 IPC."

14. In view of the aforesaid, this Court does not deem it proper, and therefore cannot be persuaded to have a pre-trial before the actual trial begins. A threadbare discussion of various facts and circumstances, as they emerge from the allegations made against the accused, is being purposely avoided by the Court for the reason, lest the same might cause any prejudice to either side during trial. But it shall suffice to observe that the perusal of the F.I.R. and the material collected by the Investigating Officer on the basis of which the charge sheet has been submitted makes out a *prima facie* case against the accused at this stage and there appear to be sufficient ground for proceeding against the accused. I do not

find any justification to quash the charge sheet or the proceedings against the applicants arising out of them as the case does not fall in any of the categories recognized by the Apex Court which may justify their quashing.

15. The prayer for quashing the impugned Non-Bailable warrant order dated 25.06.2020 as well as the entire proceedings of the aforesaid case are refused, as I do not see any abuse of the court's process at this pre-trial stage.

16. The present application has no merit and is, accordingly, **rejected.**

**Order Date :- 9.8.2024**

Kalp Nath Singh