

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 9861 of 2025

Applicant :- Arun Kumar Mishra

Opposite Party :- State of U.P.

Counsel for Applicant :- Nitin Chandra Mishra,R. B. Tripathi,Sr.
Advocate

Counsel for Opposite Party :- G.A.

Hon'ble Krishan Pahal,J.

1. List has been revised.
2. Heard Sri Anup Triwedi, learned Senior Advocate assisted by Sri Nitin Chandra Mishra, learned counsel for the applicant and Sri Devendra Singh, learned counsel for the informant as well as Sri Sunil Kumar, learned A.G.A. for the State and perused the record.
3. Applicant seeks bail in Case No.3227/IX/24 (State vs. Arun Kumar Mishra), arising out of Case Crime No.0035 of 2024, under Sections 323, 376, 420, 504, 506 I.P.C., Police Station- Mahila Thana, District- Banda, during the pendency of trial.

PROSECUTION STORY:

4. The informant joined the Old Rajendra Nagar, New Delhi Branch of Yes Bank as Relationship Manager. The applicant is stated to be an account holder in the said bank. He is stated to have offered the victim/informant the job of his personal assistant in his company for a salary of Rs.75,000/- per month alongwith accommodation and other perks. The informant joined the company of the applicant after resigning from the bank on 2.1.2024.
5. On 12.1.2024 at about 09:30 p.m., the applicant is stated to have suddenly come to the house of the informant alongwith cold coffee and stated that he has got a huge profit in the company, as such, he shall give

her gifts. After consuming the said coffee, the victim is stated to have got intoxicated, as such, the applicant disrobed her completely and committed rape with her as she could not resist being intoxicated by the said spiked coffee. The applicant is even stated to have video recorded the said act and subsequently started blackmailing her.

6. On 13.1.2024, the applicant took the victim by flight to Mumbai and got a room booked in Taj Hotel on the basis of her Aadhar Card. On 15.1.2024 the applicant took her to somewhere else and got her to sign on some papers and conducted *Saptapadi* and added vermilion to her forehead. On 16.1.2024 the duo returned to Delhi and the rape and unnatural offence continued thereafter.

7. On 17.2.2024, the applicant is stated to have come to the house of her aunt at Baberu, district Banda and committed rape with her by showing an indecent video of her and asked her to come alongwith him to Delhi where he shall marry her as he has divorced his wife and she was forced to go alongwith him to Delhi.

8. On 20.2.2024, the informant told the applicant that she was pregnant. On 4.3.2024, she was informed by the first wife of the applicant that he already has married three women prior to the informant and had children from each of them.

9. The victim was again forced by the applicant to come to Golden Tulip Hotel, Lucknow on 28.3.2024 and was raped again. The applicant is stated to have hit the victim, thereby, leading to termination of her pregnancy. The applicant is even stated to have taken possession of all the educational documents in original alongwith her clothes and ornaments and had promised to marry her in January, 2024.

10. The informant is stated to have gone to her parental home on 29.4.2024 to prepare for the said marriage, but subsequently, the applicant is stated to have refused to comply with the said promise of marriage telephonically and informed her that he had forged certain documents and

had shown her marriage to have been solemnized at Arya Samaj Temple. The applicant is even stated to have retained her salary.

ARGUMENTS ON BEHALF OF APPLICANT:

11. The applicant is absolutely innocent and has been falsely implicated in the present case.

12. The FIR is delayed by about six months and there is no explanation of the said delay caused. The victim failed to report the matter at the time of first consensual relationship established in January, 2024.

13. The applicant had challenged the first information report before this Court by filing Criminal Misc. Writ Petition No.10952 of 2024, whereby he was granted interim protection vide order dated 1.7.2024.

14. The victim has given contradictory statements U/s 161 & 164 Cr.P.C. to the version of the FIR.

15. The Investigating Officer has exonerated the applicant of offences of Sections 313 and 377 I.P.C., as such, the prosecution story stands falsified, as there is no evidence on record regarding miscarriage and unnatural offence.

16. It is clear that victim was in relationship with the applicant. The Whatsapp chats between them have been filed as Annexure-5 to the affidavit filed with bail application. The victim had visited several places with the applicant, namely, Mumbai, Shirdi and stayed at several hotels booked jointly in the name of applicant and herself. The details of the journey including air tickets and hotel bookings have been filed as Annexure-6 to the affidavit filed with bail application.

17. The informant herein got instituted an FIR No.753 of 2024, under Sections 70, 308(5), 351(3), 123 and 115(2) B.N.S. at Police Station Kotwali Nagar, District Banda through her friend and the Investigating Officer was pleased to file closure report in the said case. Although a protest petition was filed by the said informant in that case.

18. It is true that applicant is a married person and he fell in love with the victim and established corporeal relationship with her. The victim is a major lady aged about 30 years and applicant is aged about 42 years, as such, the said relationship was consensual one. It is true that the said relationship is not legitimate, but it is not a case of rape either. The offence may fall within the category of Section 494 I.P.C. only, which is triable by Magistrate of First Class.

19. The instant case may fall within the category of immorality, but it cannot be termed as penal, which implies that the act in question might be considered unethical or wrong by societal or moral standards, but it does not necessarily violate any law that prescribes a legal punishment.

20. The allegations that applicant had married three women earlier on are false.

21. Several other submissions have been made on behalf of the applicant to demonstrate the falsity of the allegations made against him. The circumstances which, as per counsel, led to the false implication of the applicant have also been touched upon at length.

22. The applicant has no other criminal antecedent to his credit except one case instituted against him at district Banda at the behest of informant in the instant case. The applicant is languishing in jail since 8.1.2025. The applicant is ready to cooperate with trial. In case, the applicant is released on bail, he will not misuse the liberty of bail

23. Much reliance has been placed on paragraphs 12 & 13 in the judgment of the Supreme Court passed in ***Sheikh Arif vs. The State of Maharashtra and Another***¹, which read as under:-

"12) If this material, which is a part of the investigation papers, is perused carefully, it is obvious that the physical relationship between the appellant and the second respondent was consensual, at least from 2013 to 2017. The fact that they were engaged was admitted by the second respondent. The fact that in 2011, the

¹ 2024 INSC 70

appellant proposed her and in 2017, there was engagement is accepted by the second respondent. In fact, she participated in the engagement ceremony without any protest. However, she has denied that her marriage was solemnised with the appellant. Taking the prosecution case as correct, it is not possible to accept that the second respondent maintained a physical relationship only because the appellant had given a promise of marriage.

13) Thus, in our view, the continuation of the prosecution in the present case will be a gross abuse of the process of law. Therefore, no purpose will be served by continuing the prosecution."

24. Reliance has also been placed on paragraphs 34 & 35 in the judgment of the Supreme Court passed in **Rajnish Singh @ Soni vs. State of U.P. and Another**², which read as under:-

*"34. It is trite that there is a distinction between rape and consensual intercourse. This Court in **Deepak Gulati v. State of Haryana, (2013) 7 SCC 675** differentiated between a mere breach of promise and not fulfilling a false promise and held that an accused will only be liable if the Courts concludes that his intentions are mala fide and he has clandestine motives. The relevant extract is reproduced hereinbelow: -*

"21. Consent may be express or implied, coerced or misguided, obtained willingly or through deceit. Consent is an act of reason, accompanied by deliberation, the mind weighing, as in a balance, the good and evil on each side. There is a clear distinction between rape and consensual sex and in a case like this, the court must very carefully examine whether the accused had actually wanted to marry the victim, or had mala fide motives, and had made a false promise to this effect only to satisfy his lust, as the latter falls within the ambit of cheating or deception. There is a distinction between the mere breach of a promise, and not fulfilling a false promise. Thus, the court must examine whether there was made, at an early stage a false promise of marriage by the accused; and whether the consent involved was given after wholly understanding the nature and consequences of sexual indulgence. There may be a case where the prosecutrix agrees to have sexual intercourse on account of her love and passion for the accused, and not solely on account of misrepresentation made to her by

the accused, or where an accused on account of circumstances which he could not have foreseen, or which were beyond his control, was unable to marry her, despite having every intention to do so. Such cases must be treated differently. An accused can be convicted for rape only if the court reaches a conclusion that the intention of the accused was mala fide, and that he had clandestine motives.

...

24. Hence, it is evident that there must be adequate evidence to show that at the relevant time i.e. at the initial stage itself, the accused had no intention whatsoever, of keeping his promise to marry the victim. There may, of course, be circumstances, when a person having the best of intentions is unable to marry the victim owing to various unavoidable circumstances. The "failure to keep a promise made with respect to a future uncertain date, due to reasons that are not very clear from the evidence available, does not always amount to misconception of fact. In order to come within the meaning of the term "misconception of fact", the fact must have an immediate relevance". Section 90 IPC cannot be called into aid in such a situation, to pardon the act of a girl in entirety, and fasten criminal liability on the other, unless the court is assured of the fact that from the very beginning, the accused had never really intended to marry her."

(emphasis supplied)

35. It is, therefore, clear that the accused is not liable for the offence of rape if the victim has wilfully agreed to maintain sexual relations. The Court has also recognised that a prosecutrix can agree to have sexual intercourse on account of her love and passion for the accused."

25. Reliance has also been placed on paragraphs 6, 7 & 8 in the judgment of the Supreme Court passed in *SLP (Crl.) No.1889/2024 (Nitin B. Nikhare vs. The State of Maharashtra and Another)*, which read as under:-

6. This Court in a catena of judgments has held that the mere fact that physical relations were established pursuant to a promise to marry will not amount to a rape in every case. In order for the

offence of rape to be made out, two conditions need to be satisfied i.e. that the promise of marriage was made by the accused solely with a view to obtain consent for sexual relations without having any intention of fulfilling said promise from the very beginning, and that the false promise of marriage had a direct bearing on the prosecutrix giving her consent for sexual relations. [See: Pramod Suryabhan Pawar v. The State of Maharashtra and Ors. (2019) 9 SCC 608; Mahesh Damu Khare v. The State of Maharashtra and Ors. 2024 SCC OnLine SC 347]

7. From a perusal of the record, it is clear that this was a case of a consensual relationship from the beginning. Even if the case of the prosecutrix is accepted, it does not appear that the initial promise to marry was in bad faith. It was only the subsequent circumstances that prevented fulfilment of alleged false promise to marry. Resultantly, the relationship turned sour which has given rise to the present FIR. Further, in view of the material on record, we do not see this as a case where provisions of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act can be attracted.

8. Hence, the entire criminal proceedings initiated against the appellant are nothing but an abuse of the process of law. In our opinion the High Court should have exercised its inherent power under Section 482 of the Code of Criminal Procedure to quash the proceedings."

ARGUMENTS ON BEHALF OF STATE/OPPOSITE PARTY:

26. It is argued by learned counsel for the informant that the applicant is already married to three other ladies and is a *casanova* and is used to luring different women into consensual relationships. The statements of two other ladies in addition to his wife have been recorded by the Investigating Officer who have categorically stated that applicant was married to one XXXX and subsequent to it married two other ladies and had children from each of them.

27. The applicant is a rich person and he has misused his money and clout, thereby, ruined the life of the victim/informant in the instant case.

28. The victim is about 25 years old and applicant had forged the marriage certificate purported to have been solemnized at Arya Samaj Mandir, Greater Noida, Gautam Buddha Nagar. This Court had ordered

for a detailed inquiry against the persons running the said temple, as such, the applicant is not entitled for bail, having forged the said documents of marriage.

29. It is further argued that in Case Crime No.753 of 2024 instituted against the applicant at police station Kotwali Nagar, district Banda, the C.J.M. concerned was pleased to order for further investigation in the case and observed that complete investigation undertaken earlier was tainted.

CONCLUSION:

30. In the present case, it is imperative to bring to the fore the changing dynamics and depleting standards of sexual relationships in contemporary society. The victim, with full and conscious knowledge of the applicant's previous marital history-having been married thrice before, chose to establish a corporeal relationship with him. This relationship, while mutual and consensual during its subsistence, did not conform to the traditionally accepted institution of marriage or any form of legally recognized union. While the emotional and romantic dynamics may not appear traditionally polyamorous, the relationship is consensual and involves two mature individuals the alleged victim, approximately 25 years old, and the applicant, about 42.

31. This case is reflective of a broader societal shift, where the sanctity and solemnity once associated with intimate relationships have seen a marked decline. The prevalence of transient and uncommitted relationships, often formed and dissolved at will, raises critical questions about individual responsibility and the misuse of legal provisions, especially when such relationships turn sour. It is increasingly observed that personal fallouts and emotional discord are being given a criminal colour, through the invocation of penal laws, particularly in the aftermath of failed intimate relationships.

32. The instant FIR, instituted after the relationship between the applicant and the victim fell apart, appears to be a product of such

emotional aftermath rather than a *bona fide* grievance of criminal wrongdoing. The timing and circumstances surrounding the filing of the complaint suggest a retaliatory motive rather than a genuine pursuit of justice.

33. Not all socially or ethically questionable actions warrant legal intervention. It also reflects a foundational principle in jurisprudence — the law does not enforce all aspects of morality.

34. The Supreme Court in case of ***Pramod Suryabhan Pawar vs. State of Maharashtra and Another***³ and ***Ansaar Mohammad vs. State of Rajasthan and Another***⁴ has stated that entering into any kind of corporeal relationship with a person on the false promise to marry cannot be termed as rape.

35. In light of the judgement of the Supreme Court passed in ***Niranjan Singh and another vs Prabhakar Rajaram Kharote and others***⁵, this Court has avoided detailed examination of the evidence and elaborate documentation of the merits of the case as no party should have the impression that his case has been prejudiced. A *prima facie* satisfaction of case is needed but it is not the same as an exhaustive exploration of the merits in the order itself.

36. The Supreme Court in ***Prabhakar Tewari Vs. State of U.P. and another***⁶ has observed that pendency of several criminal cases against an accused itself cannot be a basis for refusal of bail, if otherwise his case of bail is made out.

37. The well-known principle of "*Presumption of Innocence Unless Proven Guilty*," gives rise to the concept of bail as a rule and imprisonment as an exception.

3 ***2019 (9) SCC 608***

4 ***2022 SCC OnLine SC 886***

5 ***AIR 1980 SC 785***

6 ***2020 (11) SCC 648***

38. A person's right to life and liberty, guaranteed by Article 21 of the Indian Constitution, cannot be taken away simply because the person is accused of committing an offence until the guilt is established beyond a reasonable doubt. Article 21 of the Indian Constitution states that no one's life or personal liberty may be taken away unless the procedure established by law is followed, and the procedure must be just and reasonable. The said principle has been recapitulated by the Supreme Court in *Satender Kumar Antil Vs. Central Bureau of Investigation and Ors.*⁷.

39. Reiterating the aforesaid view the Supreme Court in the case of *Manish Sisodia Vs. Directorate of Enforcement*⁸ has again emphasised that the very well-settled principle of law that bail is not to be withheld as a punishment is not to be forgotten. It is high time that the Courts should recognize the principle that "*bail is a rule and jail is an exception*".

40. Learned AGA could not bring forth any exceptional circumstances which would warrant denial of bail to the applicant.

41. It is settled principle of law that the object of bail is to secure the attendance of the accused at the trial. No material particulars or circumstances suggestive of the applicant fleeing from justice or thwarting the course of justice or creating other troubles in the shape of repeating offences or intimidating witnesses and the like have been shown by learned AGA.

42. Considering the facts and circumstances of the case, submissions made by learned counsel for the parties, the evidence on record, taking into consideration that it is also admitted to both the parties that Sections 313 & 377 I.P.C. have been deleted coupled by the fact that FIR is delayed by about five months and the victim being a well qualified lady, the case law referred and without expressing any opinion on the merits of

⁷ 2022 INSC 690

⁸ 2024 INSC 595

the case, the Court is of the view that the applicant has made out a case for bail. The bail application is allowed.

43. Let the applicant- **Arun Kumar Mishra** involved in aforementioned case crime number be released on bail on furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned subject to following conditions.

(i) The applicant shall not tamper with evidence.

(ii) The applicant shall remain present, in person, before the Trial Court on dates fixed for (1) opening of the case, (2) framing of charge and (3) recording of statement under Section 313 Cr.P.C./351 B.N.S.S. If in the opinion of the Trial Court absence of the applicant is deliberate or without sufficient cause, then it shall be open for the Trial Court to treat such default as abuse of liberty of bail and proceed against him in accordance with law.

44. In case of breach of any of the above conditions, it shall be a ground for cancellation of bail. Identity, status and residence proof of the applicant and sureties be verified by the court concerned before the bonds are accepted.

45. It is made clear that observations made in granting bail to the applicant shall not in any way affect the learned trial Judge in forming his independent opinion based on the testimony of the witnesses.

Order Date :- 9.4.2025

Vikas

(Justice Krishan Pahal)