

Vikas BhushanApplicant/ vs State (Nct Of Delhi) & Anr on 10 September, 2020

Author: Anup Jairam Bhambhani

Bench: Anup Jairam Bhambhani

via Video-conferencing

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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ BAIL APPL. 2340/2020
VIKAS BHUSHAN

.....Applicant/Petitioner
Through : Mr. Ajay Kumar Jha, Advocate.

versus

STATE
(NCT OF DELHI) & ANR.

Through :

..... Respondents
Ms. Neelam Sharma, APP for
the State.
Complainant in-person along
with W/S.I. Meenakshi Nagar.

CORAM:
HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI
ORDER

% 10.09.2020 The applicant, who is an accused in case FIR No. 265/2020 dated 07.07.2020 registered under section 376 IPC at P.S.: Ranjit Nagar, Delhi, seeks regular bail.

2. Notice in this application was issued on 26.08.2020.

3. Status report dated 08.09.2020 is stated to have been filed but the same is not on record. A copy has been forwarded via e-mail and has been perused. Let the status report be brought on record.

4. Nominal roll dated 07.09.2020 has been received from the Jail Superintendent.

5. Mr. Ajay Kumar Jha, learned counsel for the applicant points- out that the even as per the allegations in the FIR, the complainant was in a consensual relationship with the applicant for several years, during which period the parties had established physical relationship several times.

6. Counsel submits that the complainant is also stated to be an educated lady, about 30 years of age, and the applicant is about 31 years old. He further states that the FIR itself shows that the complainant had known the applicant since around May 2013 and entered into physical relationship with him subsequently, several times, allegedly on the applicant having promised to marry the complainant. Thereafter, the FIR records, that in March 2016 the applicant moved to Ranchi and would meet the complainant whenever he visited Delhi; and even at that time, according to the

complainant "Our relationship continued to subsist", allegedly on promise of marriage. The same is stated to be case even subsequently for the period between June 2017 and July 2019.

7. The FIR further records that on 13.09.2019, the applicant visited the complainant's parents, on which date he conveyed to them his promise to marry the complainant. Thereafter, the allegation goes, that on 24.07.2019 the complainant's parents also went to meet the applicant's parent's house in Ranchi to discuss the marriage proposal; whereafter it appears, the applicant's brother conveyed that the applicant's parents were not keen on the marriage. It is in this backdrop that the complainant alleges a 'false promise' of marriage, which has led to the filing of the complaint; and consequent registration of the FIR on 07.07.2020.

8. Charge-sheet in the matter has been filed on 20.08.2020 and trial is under-way.

9. In the circumstances, Mr. Jha contends, that it is evident that two adults were in a consensual physical relationship for several years; that there was no element of 'deception' is clear from the fact that in connection with the proposed marriage, the applicant had approached the complainant's parents and thereafter the complainant's parents had also gone to meet the applicant's parents in Ranchi.

10. It has also been submitted that on 17.03.2020 the applicant has been appointed as Assistant Audit Officer in the Office of the Accountant General (Audit) at Raipur; and on 04.05.2020 he has got married to another person. It is argued that it is in this context, and as a measure of retribution and vengeance, on learning of the applicant's marriage that the complaint came to be made on 07.07.2020, resulting in the registration of the FIR.

11. Mr. Jha contends that the mere fact that the promise to marry did not ultimately fructify into a marriage, due to certain reasons relating to the applicant's family, does not mean that the ingredients of deception required for making-out an offence under section 376 IPC are met. Despite this, it is stated, that by order dated 25.07.2020, the learned Sessions Court has dismissed the applicant's regular bail application recording inter-alia that the investigation is at an initial stage and releasing the accused at this stage may prejudice the investigation.

12. On the other hand, relying upon status report dated 08.09.2020, Ms. Neelam Sharma, learned APP for the State opposes grant of bail. She submits that, other things apart, on 26.08.2020 a complaint has been received from the complainant alleging that she has received threatening calls on 20.07.2020 from a certain person, who she claims is the applicant's cousin brother; and that her lawyer has also received threatening calls from certain WhatsApp numbers on 13.07.2020. Ms. Sharma points-out that the complainant gives a specific name, along with dates and cell-phone numbers from which the calls were received. On being queried however, Ms. Sharma says that further action on such alleged threats is yet to be taken. Ms. Sharma confirms that charge-sheet in the matter has been filed on 20.08.2020.

13. The applicant's nominal roll shows that the applicant has been in judicial custody since 20.07.2020; that his jail conduct is 'satisfactory'; and that there is no other or prior criminal case

against him. Insofar as the complaint of alleged threats is concerned, it is noticed that the date of the alleged written complaint is the same as that on which notice in this application was issued i.e. 26.08.2020; and that no further enquiry into such threats has so far been made.

14. Upon a conspectus of the foregoing, what weighs with this court is firstly, that the case arises from a long-standing and evidently consensual relationship between two well-educated adults; secondly, that the allegation of 'false' promise of marriage or deception remains to be proved during trial since, even the FIR records that the marriage proposal was raised by the applicant with the complainant's parents, who also subsequently visited to meet the applicant's parents in Ranchi; thirdly, that the FIR came to be registered soon after the complainant learned of the applicant's marriage to a third person but not before; and lastly, that charge-sheet in the matter has been filed after completing investigation, and that therefore, no purpose in aid of investigation will be served by detaining the applicant in prison any longer.

15. Insofar as the on-going trial is concerned, the countervailing considerations are one, the possibility that the applicant may interfere in the trial by intimidating witnesses; and two, the disability that the applicant will suffer in preparing his defence if not granted bail. The first consideration can be addressed by imposing and enforcing requisite conditions; and by noticing that the applicant now holds a Government job in Raipur, Chattisgarh where he presently resides. However the serious prejudice that will be caused to the applicant's right to fair trial if he is not allowed to prepare his defence effectively in consultation with his lawyers, cannot be compensated in any other way, except by enlarging him on bail.

16. The fact that the progress of the trial will be affected by the restricted functioning of courts due to the prevailing coronavirus pandemic, also means that the trial is unlikely to conclude anytime soon.

17. For the record, the complainant has also joined the video- conference hearing in the presence of the I.O./W/S.I. Meenakshi Naagar; has assisted the learned APP; and has been heard on the point of conditions to be imposed for grant of bail.

18. In the circumstances, this court is persuaded to grant to the applicant regular bail during pendency of the trial, on the following conditions :

(a) The applicant shall furnish a personal bond in the sum of Rs. 1,00,000/- (Rupees One Lac) with 01 surety in the like amount from a blood-relative, to the satisfaction of the learned Trial Court;

(b) The applicant shall furnish to the Investigating Officer/ S.H.O. a cell phone number on which the applicant may be contacted at any time and shall ensure that the number is kept active and switched-on at all times;

(c) If the applicant has a passport, he shall surrender the same to the Trial Court;

(d) The applicant shall not contact, nor visit, nor offer any inducement threat or promise to the first informant/complainant or to any of the prosecution witnesses. The applicant shall not tamper with evidence nor otherwise indulge in any act or omission that is unlawful or that would prejudice the proceedings in the pending trial.

19. Nothing in this order shall be construed as an expression on the merits of the pending trial.
20. The bail application is disposed of in the above terms.
21. Other pending applications, if any, also stand disposed of.
22. A copy of this order be sent to the Jail Superintendent.

ANUP JAIRAM BHAMBHANI, J.

SEPTEMBER 10, 2020 j