

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL MISC.APPLICATION (FOR ANTICIPATORY BAIL) NO. 4015
of 2024**

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GAURAV HARSHABHAI PATEL
Versus
STATE OF GUJARAT

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Appearance:

MR ND NANAVATI, SR. ADVOCATE, MR TUSHAR CHAUDHARY(5316) for the Applicant(s) No. 1

MR HK PATEL, PUBLIC PROSECUTOR for the Respondent(s) No. 1

MR DINESH J PRAJAPATI, for the First Informant

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CORAM:HONOURABLE MR. JUSTICE J. C. DOSHI**Date : 29/02/2024****ORAL ORDER**

1. Leave to join the victim. Amendment to be carried out, forthwith.

2. Learned Advocate, Mr. Prajapati, submitted that he has received instructions to appear on behalf of the First Informant and seeks permission to file vakalatnama and he also tendered the affidavit on behalf of the victim, which is ordered to be taken on record.

2.1 Permission is granted. Registry is directed to accept the same.

3. Rule. Learned APP waives service for the Respondent-State and learned Advocate, Mr. Prajapati, waives for the First

Informant.

4. By way of the present petition under Section 438 of the Code of Criminal Procedure, 1973, the petitioner has prayed to release him on anticipatory bail in case of his arrest in connection with the FIR registered as C.R. No. 11195034240054 of 2024 with Palanpur East Police Station, District: Banaskantha, under Sections 376(2)(n), 417 and 506(2) of the Indian Penal Code, 1860 ('IPC' in brief).

5. Learned Sr. Advocate, Mr. Nanavati, appearing with learned Advocate, Mr. Chaudhary, for the petitioner submitted that the first informant is a major and married lady of about 24 years of age and therefore, she was fully aware of the repercussions and consequences of such a relationship. It was, further, submitted that, as stated in the FIR, the alleged offence, for the first time, took place in September, 2022 and at that time no complaint or grievance was made with regard to the same. Therefore, it was submitted that, looking to the tenor of the FIR and the allegations made therein, at the most, it can be said to be a consensual relationship between the two major persons and since, the same became sore, the FIR came to be filed in the year 2024. It was submitted that the first informant, herself, was married, at the time of entering the relationship with the petitioner, and therefore, there is no question of the petitioner of making her false promise of marriage and in fact, the said fact would indicate that no case is made out for the offence under Section 376 of the IPC.

5.1 By making the above submissions, it was prayed that considering the nature of allegations, role attributed to the petitioner, the petitioner may be enlarged on anticipatory bail by imposing suitable conditions.

6. Learned Advocate, Mr. Prajapati, appearing for the First Informant, produced on record the affidavit of the first informant, and strongly opposed this petition, stating that from the FIR it is clearly revealed that the petitioner had given a false promise of marriage to the first informant, so as to tempt her to enter into relationship with him and thereafter, he physically abused her. It was submitted that when the first informant insisted that the petitioner should marry her, as per the promises given by him, the petitioner had threatened her by pointing gun at her. The attention of this Court was also drawn to the order rejecting bail application of the petitioner dated 16.02.2024, passed by the trial Court in Criminal Misc. Application No. 151 of 2024 and it was submitted that the learned Sessions Judge also has noted that for the purpose of investigation, the custodial interrogation of the petitioner shall be necessary and hence, this petition be rejected.

6.1 Learned Additional Public Prosecutor appearing on behalf of the respondent-State produced on record the affidavit of the concerned IO and submitted that the petitioner does possess a valid license for keeping firearm, but, he has not disclosed before the concerned authority, as to where the said weapon is kept and as the same is required to be recovered and the relevant sections are also to be added, it was prayed that this

petition be rejected.

7. Heard the learned Advocates for the respective parties and perused the papers.

8. Having heard the learned advocate for the parties and having perused the investigation papers, what emerges is that the victim, before entering into relationship with the petitioner, had already been married at Village Mumanvas and her husband is working at Ahmedabad and that she is residing at her parental home. From the record it is also revealed that the victim has studied up to Standard-12 and has also done the course of nursing. It is also revealed that, while the victim was working as a nurse at Mavjat Hospital, she came into contact with the petitioner, who, being a doctor by profession, was also working in the very same hospital.

8.1 It is the case of the first informant that the petitioner made false promises of marrying her and thereby, physically abused her for about two years. Further, as per the FIR, the first incident, punishable under Section 376 of the IPC, took place in September, 2022, but, at that time, the first informant neither raised any grievance nor made any complaint about the same to anyone, including her family members. It is, further, revealed from the FIR that such relationship continued for about two years, i.e. till the filing of the FIR in the year 2024, and in the interregnum period also there was no complaint made by her to anyone about the same. Here, the fact remains that, at the relevant point of time, the petitioner

was aged about 24 years and was already a married lady and therefore, she was very well aware the consequences of her actions, so also the fact that she cannot marry the present petitioner, while her first marriage is in existence.

8.2 In above view of the matter, it would be relevant to refer to decision of the Hon'ble Apex Court in the case of '**Sonu alias Subhas Kumar v/s. State of Uttar Pradesh**', reported in AIR 2019 SC 4010, wherein, at Paragraphs- 7 and 11, it is held as under :-

"7. On the basis of the rival submissions and with the assistance of the counsel, we have perused the FIR. The FIR specifically records that the second respondent had developed a friendship with the appellant and that he had assured that he would marry her. The FIR then records that the appellant and the second respondent developed a physical relationship which spread over a period of one and a half years, during the course of which the second respondent conversed with the parents and sister of the appellant. It has been alleged in the FIR that the parents of the appellant were agreeable to the couple getting married. As a matter of fact, the appellant returned to his home town at Jhansi on 5 January 2018 when he had made a phone call to her stating that she should come and visit him so that they can get married. On travelling to Jhansi at the behest of the appellant, the second respondent was informed by the father of the 5 appellant that the appellant did not wish to marry her.

The contents of the statement under Section 164 of CrPC also indicate that the second respondent had "voluntarily developed relationship of husband-wife with him". The second respondent has then stated that "now, he and his family members are refusing to marry with me". The second respondent has further stated that "my sole grievance is that Sonu is refusing to marry with me.

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11. Bearing in mind the tests which have been enunciated in the above decision, we are of the view that even assuming that all the allegations in the FIR are correct for the purposes of considering the application for quashing under Section 482 of CrPC, no offence has been established. There is no allegation to the effect that the promise to marry given to the second respondent was false at the inception. On the contrary, it would appear from the contents of the FIR that there was a subsequent refusal on the part of the appellant to marry the second respondent which gave rise to the registration of the FIR. On these facts, we are of the view that the High Court was in error in declining to entertain the petition under Section 482 of CrPC on the basis that it was only the evidence at trial which would lead to a determination as to whether an offence was established."

8.3 In the case of '**Dr. Dhruvaram Murlidhar Sonar v/s. State of Maharashtra**', reported in (2019) 18 SCC 191, the Hon'ble Apex Court observed as under at Paragraph-23

thereof;

"23. Thus, there is a clear distinction between rape and consensual sex. The court, in such cases, must very carefully examine whether the complainant 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 also a distinction between mere breach of a promise and not fulfilling a false promise. If the accused has not made the promise with the sole intention to seduce the prosecutrix to indulge in sexual acts, such an act would not amount to rape. 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 the misconception created by 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. Such cases must be treated differently. If the complainant had any mala fide intention and if he had clandestine motives, it is a clear case of rape. The acknowledged consensual physical relationship between the parties would not constitute an offence under Section 376 IPC."

8.4 The latest in the line is the order of the Hon'ble Apex Court in the case of '**Naim Ahamed v/s. State (NCT of Delhi)**', reported in 2023 LiveLaw (SC) 66, wherein, at

Paragraphs- 19 and 20, it is held as under :-

"19. After duly examining the record in the light of the submissions made by the learned counsels for the parties, following facts have emerged: -

- (i) Prosecutrix was a married woman having three children.*
- (ii) Accused was staying in a tenanted premises situated in front 17 of the house of the prosecutrix.*
- (iii) Though initially hesitant, the prosecutrix developed liking for the accused, and both started having sexual relationship with each other.*
- (iv) The prosecutrix delivered a male child on 28/10/2011 from the loin of the accused.*
- (v) The prosecutrix went to the native place of the accused in 2012 and came to know that he was a married man having children. (*
- (vi) The prosecutrix still continued to live with the accused in separate premises.*
- (vii) The prosecutrix and her husband took divorce by mutual consent in 2014 and thereafter prosecutrix permanently left her three children with her husband.*
- (viii) The prosecutrix lodged the complaint on 21st March, 2015 alleging that she had consented for sexual relationship with the accused as the accused had promised her to marry and subsequently did not marry.*

20. *The bone of contention raised on behalf of the respondents is that the prosecutrix had given her consent for sexual relationship under the misconception of fact, as the accused had given a false promise to marry her and subsequently he did not marry, and therefore such consent was no consent in the eye of law and the case fell under the Clause – Secondly of Section 375 IPC. In this regard, it is pertinent to note that there is a difference between giving a false promise and committing breach of promise by the accused. In case 18 of false promise, the accused right from the beginning would not have any intention to marry the prosecutrix and would have cheated or deceived the prosecutrix by giving a false promise to marry her only with a view to satisfy his lust, whereas in case of breach of promise, one cannot deny a possibility that the accused might have given a promise with all seriousness to marry her, and subsequently might have encountered certain circumstances unforeseen by him or the circumstances beyond his control, which prevented him to fulfill his promise. So, it would be a folly to treat each breach of promise to marry as a false promise and to prosecute a person for the offence under Section 376. As stated earlier, each case would depend upon its proved facts before the court.“*

8.5 Further, the Hon'ble Apex Court in the case of '**Bhadresh Bipinbhai Sheth Vs. State of Gujarat**', reported

in AIR 2015 SC 3090, has delineated the following factors and parameters that need to be taken into consideration while dealing with the anticipatory bail;

"(a) The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;

(b) The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a court in respect of any cognizable offence;

(c) The possibility of the applicant to flee from justice;

(d) The possibility of the accused's likelihood to repeat similar or other offences;

(e) Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her;

(f) Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people;

(g) The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role of the accused in the case. The cases in which the accused is implicated with

the help of Sections 34 and 149 of the Penal Code, 1860 the court should consider with even greater care and caution, because over implication in the cases is a matter of common knowledge and concern;

(h) While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors, namely, no prejudice should be caused to free, fair and full investigation, and there should be prevention of harassment, humiliation and unjustified detention of the accused;

(i) The Court should consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;

(j) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail."

8.6 It is equally incumbent upon the Court to exercise its discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in a plethora of decisions of the Hon'ble Apex Court on the point. It is well settled that, among other circumstances, the factors to be borne in mind while considering an application for bail are (i) whether there is any

prima facie or reasonable ground to believe that the accused has committed the offence; (ii) nature and gravity of the accusation; (iii) severity of the punishment in the event of conviction; (iv) danger of the accused absconding or fleeing, if released on bail; (v) character, behaviour, means, position and standing of the accused; (vi) likelihood of the offence being repeated; (vii) reasonable apprehension of the witnesses being influenced; and (viii) danger, of course, of justice being thwarted by grant of bail. Though, at the stage of granting bail an elaborate examination of evidence and detailed reasons touching the merit of the case, which may prejudice the accused, should be avoided.

8.7 This Court while exercising discretion in favour of the petitioner has taken into consideration the law laid down by the Apex Court in the case of '**Siddharam Satlingappa Mhetre vs. State of Maharashtra and Ors.**', reported in (2011) 1 SCC 694, wherein the Hon'ble Apex Court reiterated the law laid down by the Constitutional Bench in the the case of '**Shri Gurubaksh Singh Sibbia & Ors. Vs. State of Punjab**', reported in (1980) 2 SCC 665. This Court has also taken into consideration the law laid down in the case of '**Sushila Agarwal v/s. State (NCT of Delhi)**', reported in (2020) 5 SCC 1.

9. In the result, the present petition is **allowed** by directing that in the event of applicant herein being arrested pursuant to FIR registered as C.R. No. 11195034240054 of 2024 with Palanpur East Police Station, District: Banaskantha, the

petitioner shall be released on bail on furnishing a personal bond of Rs. 10,000/- (Rupees Ten Thousand only) with one surety of like amount on the following conditions that the petitioner :

- (a) shall cooperate with the investigation and make himself available for interrogation whenever required;
- (b) shall remain present at concerned Police Station on **13th & 14th March, 2024**, between 10.00 a.m. and 4.00 p.m.;
- (c) shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the fact of the case so as to dissuade him from disclosing such facts to the court or to any police officer;
- (d) shall not obstruct or hamper the police investigation and not to play mischief with the evidence collected or yet to be collected by the police;
- (e) shall at the time of execution of bond, furnish the address to the investigating officer and the court concerned and shall not change residence till the final disposal of the case till further orders;

(f) shall not leave India without the permission of the concerned trial court and if having passport shall deposit the same before the concerned trial court within a week;

10. If breach of any of the above conditions is committed by the petitioner, the concerned learned Judge will be free to take appropriate action in the matter. It will be open for the concerned Court to delete, modify and/or relax any of the above conditions in accordance with law. At the time of trial, the Trial Court shall not be influenced by the *prima facie* observations made by this Court while granting the petitioner on bail. Direct service is permitted. Rule is made absolute, accordingly.

(J. C. DOSHI,J)

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