

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of decision: 09th NOVEMBER, 2021

IN THE MATTER OF:

+ **CRL.M.C. 2392/2021**

BHAGYASHREE @ MONICA Petitioner

Through Mr. Deepak Sharma, Advocate

versus

STATE OF N.C.T. OF DELHI & ANR. Respondents

Through Ms. Meenakshi Chauhan, APP for
the State with SI Shalini, P.S. Laxmi
Nagar.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

SUBRAMONIUM PRASAD, J.

1. This petition has been filed under Section 439(2) CrPC for cancellation of bail granted vide order dated 18.08.2021 by learned Additional Sessions Judge, Karkardooma Courts in FIR No.199 of 2021 dated 04.05.2021 registered at Police Station Laxmi Nagar for offences under Sections 376(2)(n) and 506 of the Indian Penal Code, 1860.

2. The facts leading to the instant case are stated as follows:-

- i. The Petitioner is a 27-year-old woman who met Respondent No.2, whose bail is being sought to be cancelled in the instant application, in the year 2015 at Invertis University wherein she was pursuing her B.Com.
- ii. The Petitioner fell in love with Respondent No.2 and they both were in a relationship.
- iii. On 05.07.2018, when the Petitioner reached Delhi at 3:30 PM,

the Respondent No.2 said to her that he was hungry and they should go to her room to have food, as well as to rest and talk. At about 4:30 PM, Respondent No.2 reached the Petitioner's flat and, allegedly, at 5:00 PM, he started touching her. The Petitioner questioned Respondent No.2's actions, and in response to the same, Respondent No.2 stated that he loved the Petitioner, intended to marry her and that after the marriage they would be in such physical relations. Despite the Petitioner refusing the advances of Respondent No.2, it is alleged that Respondent No.2 forcefully had sexual intercourse with the Petitioner.

- iv. After the sexual intercourse, when the Petitioner started crying and told Respondent No.2 that she would file a police complaint against him, Respondent No.2 threatened to kill her and her mother if she filed a complaint or if she informed anyone.
- v. Respondent No.2 told the Petitioner that he loved her and he would marry her, and that if she filed a police complaint, she would end up ruining her life as well as jeopardise their relationship. He further said that he would never leave her.
- vi. During the course of the relationship between the Petitioner and Respondent No.2, it has been stated that Respondent No.2 visited her flat many times, and despite her refusal, he would have sexual intercourse with her. It is also stated that whenever the Petitioner would bring up the prospect of marriage, Respondent No.2 would counter the same with some excuse or

the other.

- vii. On 13.02.2020, Respondent No.2 visited the flat of the Petitioner around 7:00 PM and had sexual intercourse with her against her wishes, and on 14.02.2020, Respondent No.2 left the flat informing the Petitioner that he would be going home in order to speak to his family about their marriage.
- viii. Thereafter, whenever the Petitioner sought to speak to Respondent No.2 over the phone regarding their marriage, he would deflect the topic by making excuses.
- ix. It is stated that the Petitioner's father had passed away in 2018 and that the Petitioner's mother was a housewife who lived alone. Due to this, the Petitioner out of fear could never inform her family about what was taking place in her personal life and how she was emotionally devastated as a result of Respondent No.2's false promises.
- x. It has been alleged by the Petitioner that Respondent No.2 has completely ruined the petitioner's life because of his false promise to marry on the basis of which he had sexual intercourse with her multiple times.
- xi. On the said complaint, the instant FIR was registered against Respondent No.2 herein.
- xii. On 03.06.2021, Respondent No.2 was arrested by the concerned I.O. Consequently, Respondent No.2 filed an application for regular bail before the learned Additional Sessions Judge on 07.06.2021 and the same was rejected *vide* Order dated 22.06.2021. Thereafter, Respondent No.2

approached this Hon'ble Court for grant of regular bail. In the meanwhile, the Respondent No.2 also filed an application before this Hon'ble Court seeking interim bail which was dismissed as withdrawn *vide* order dated 08.07.2021.

xiii. On 09.07.2021, Respondent No.2 filed another application for grant of regular bail and was granted interim bail on 14.07.2021 by the learned Additional Sessions Judge, with the application for regular bail being listed on 03.08.2021.

xiv. On 03.08.2021, the matter was listed before another learned Additional Sessions Judge, and thereafter bail was granted to Respondent No.2 *vide* impugned order dated 18.08.2021.

3. Heard Mr. Deepak Sharma, learned Counsel for the Petitioner, Ms. Meenakshi Chauhan, learned APP for the State, and perused the material on record.

4. Mr. Deepak Sharma, learned Counsel for the Petitioner, states that the learned Additional Sessions Judge has passed the impugned Order dated 18.08.2021 without considering all the essential facts and has also failed to peruse the detailed WhatsApp chats and conversations which have been filed by both the parties. He further argues that the learned Additional Sessions Judge has also failed to go through the list of documents containing specific social media chats which support the contention of the Petitioner. Additionally, Mr. Sharma has submitted that the impugned Order passed by the learned Additional Sessions Judge is devoid of the version of the Petitioner and, therefore, is against the principle of natural justice and the Petitioner's right to fair trial.

5. The Supreme Court has consistently held that cancellation of bail

already granted stands on a different footing than rejection of bail when bail is applied for. It is easier to reject an application for bail in a non-bailable case than to a bail once granted. The underlying reasoning for the same is that cancellation of bail interferes with personal liberty which has been already secured by the accused either by the exercise of discretion by the cCourt or by the thrust of law. Therefore, any order of the court cancelling bail must be administered with utmost care and circumspection.

6. The Supreme Court in State (Delhi Administration) v. Sanjay Gandhi, 1978 (2) SCC 411 while dealing with an application under Section 439 (2) CrPC has observed as under:-

" 13. Rejection of bail when bail is applied for is one thing; cancellation of bail already granted is quite another. It is easier to reject a bail application in a non-bailable case than to cancel a bail granted in such a case. Cancellation of bail necessarily involves the review of a decision already made and can by and large be permitted only if, by reason of supervening circumstances, it would be no longer conducive to a fair trial to allow the accused to retain his freedom during the trial. The fact that prosecution witnesses have turned hostile cannot by itself justify the inference that the accused has won them over. A brother, a sister or a parent who has seen the commission of crime, may resile in the Court from a statement recorded during the course of investigation. That happens instinctively, out of natural love and affection, not out of persuasion by the accused. The witness has a stake in the innocence of the accused and tries therefore to save him from the guilt. Likewise, an employee may, out of a sense of gratitude, oblige the employer by uttering an untruth without pressure or persuasion. In other words, the objective fact that witnesses have turned hostile must be shown to bear a causal connection with the subjective involvement therein

of the respondent. Without such proof, a bail once granted cannot be cancelled on the off chance or on the supposition that witnesses have been won over by the accused. Inconsistent testimony can no more be ascribed by itself to the influence of the accused than consistent testimony, by itself, can be ascribed to the pressure of the prosecution. Therefore, Mr Mulla is right that one has to countenance a reasonable possibility that the employees of Maruti like the approver Yadav might have, of their own volition, attempted to protect the respondent from involvement in criminal charges. Their willingness now to oblige the respondent would depend upon how much the respondent has obliged them in the past. It is therefore necessary for the prosecution to show some act or conduct on the part of the respondent from which a reasonable inference may arise that the witnesses have gone back on their statements as a result of an intervention by or on behalf of the respondent."

(emphasis supplied)

7. Furthermore, when an order granting bail is passed by a lower court, the appellate court must be slow to interfere with such an order until and unless it is shown that the said order was passed without due application of judicial mind. In Mahipal v. Rajesh Kumar, 2020 (2) SCC 118, the Supreme Court has observed as under:-

" 12. The determination of whether a case is fit for the grant of bail involves the balancing of numerous factors, among which the nature of the offence, the severity of the punishment and a prima facie view of the involvement of the accused are important. No straitjacket formula exists for courts to assess an application for the grant or rejection of bail. At the stage of assessing whether a case is fit for the grant of bail, the court is not required to enter into a detailed analysis of the evidence on record to establish beyond reasonable doubt the commission of the crime by the accused. That is a matter for trial. However,

the Court is required to examine whether there is a prima facie or reasonable ground to believe that the accused had committed the offence and on a balance of the considerations involved, the continued custody of the accused subserves the purpose of the criminal justice system. Where bail has been granted by a lower court, an appellate court must be slow to interfere and ought to be guided by the principles set out for the exercise of the power to set aside bail."

8. This is a case of breach of promise to marry, thereby amounting to rape. In order to establish whether sexual intercourse was committed in the backdrop of a false promise of marriage, it has been held by the Supreme Court that the consent for sexual intercourse which is derived from the prosecutrix must be coerced or misguided, or obtained through deceit. Therefore, it must be shown that at the relevant stage, i.e. at the stage of promising marriage, the accused had no intention of keeping the promise to marry the prosecutrix [See Deepak Gulati v. State of Haryana, (2013) 7 SCC 675]. However, in the instant case, whether the consent which was obtained from the Petitioner herein was under the misconception of a false promise of marriage can only be discerned during the trial itself.

9. A perusal of the impugned order indicates that the learned Additional Sessions Judge has considered all the material on record and the impugned Order dated 18.08.2021 granting regular bail to Respondent No.2 is based on cogent reasoning. This Court does not find any infirmity in the Order passed by the learned Additional Sessions Judge and is, therefore, of the opinion that there is no reason to interfere in the same. Furthermore, no supervening circumstances exist in the instant case which would justify the interference of this Court in cancelling the bail granted by the learned

Additional Sessions Judge.

10. In the impugned Order dated 18.08.2021, the learned Additional Sessions Judge has set the following conditions while granting bail to the accused:

- (i) The accused must furnish a personal bond in the sum of Rs. 50,000/- with one surety of the like amount to the satisfaction of the Learned MM/Link MM/Duty MM.
- (ii) The accused shall not make any attempt to contact the prosecutrix or any of the prosecution witnesses either directly or indirectly.
- (ii) The accused shall not threaten the witnesses or tamper with the evidence.
- (iii) The accused shall join the investigation as and when directed by the IO/SHO.
- (iv) The accused shall not leave the country without prior permission from the Court.
- (v) The accused shall intimate on record any change of his residential address within 30 days of such change.

11. In case of any violation of the conditions of bail set by the learned Additional Sessions Judge, this Court grants liberty to the Petitioner herein to approach the competent Court in accordance with the law to seek cancellation of the bail which has been granted to the Respondent No.2.

12. The petition is dismissed with the above observations along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

NOVEMBER 09, 2021/hsk