

MANU/DE/0857/2021

IN THE HIGH COURT OF DELHI

Bail Appln. 2961/2020 and CrI. M.A. 4145-47/2021

Decided On: 10.05.2021

Appellants: **Navdeep Singh**
Vs.

Respondent: **State of NCT of Delhi**

Hon'ble Judges/Coram:

Rajnish Bhatnagar, J.

Counsel:

For Appellant/Petitioner/Plaintiff: Dayan Krishnan, Sr. Advocate, Jugal Wadhwa, Rishabh Wadhwa, Shashank, Prashant Sodhi, Raghav Goyal and Akanshi Lodha, Advocates

For Respondents/Defendant: Nandita Rao, ASC, Manjeet Arya, APP, Shobha Gupta, Hassan Zubari Waris, Anand Nandan and Amit Pawan, Advocates

Case Note:

Criminal - Anticipatory Bail - Grant of - Sections 354, 376, 493 and 506 of Indian Penal Code, 1860 (IPC) - Present petition filed for grant of anticipatory bail in respect of FIR registered against petitioner for commission of offences registered under Sections 354, 376, 493 and 506 of IPC - Whether case made out for grant of anticipatory bail - Held, requirement of telephone recovery is not sufficient ground to deny grant of anticipatory bail - No chance appears of his fleeing away from process of law or in other words - No such apprehension has been expressed by prosecution - At this stage, court has to see prima facie case and not to deal with evidence in detail - Physical relations between petitioner and victim being consensual or otherwise are matter of trial - Petitioner allowed to be released on bail - Petition allowed. [61], [63]

ORDER

Rajnish Bhatnagar, J.

1. This is a petition for grant of anticipatory bail in respect of FIR No. 0620/2020, U/s. 354/376/493/506 IPC registered by Police Station Vikas Puri Delhi.
2. Briefly stated, the facts of the prosecution case are that on 05.09.2020, on the basis of a complaint against the petitioner, his wife Mrs. Khushboo Singh and two employees of Guruji Ka Ashram Trust (registered) namely Suresh and Bilal, an FIR bearing No. 0620/2020, U/s. 376/354/493/506 IPC was registered.
3. In the complaint, the complainant alleged that she was a permanent resident of Jhansi who got married on 11.12.2010 and was living with her husband and in-laws in New Delhi. It is alleged that her husband and her parents were firm believers of Guruji, whose temple is known as "Bade Mandir", so she also got involved in the same. It is further alleged that she met the petitioner in the year 2013, who is the nephew of late Guruji and was his sole heir, so he was in full control of the "Bade Mandir" and was handling all its affairs and had a dominating presence in all the activities of the Mandir. It is further alleged that the husband of the complainant and his family members were

well acquainted with the petitioner and the complainant was also introduced to him. It is further alleged that after sometime, petitioner started visiting the house of the complainant on the pretext of meeting her children and husband, who was closed to him.

4. It is further alleged that the petitioner started persuading her husband to come for the functions/satsang of the mandir at Dugri in Punjab which is the birth place of Guruji for seva. So, her husband started going to Dugri taking her and her children alongwith him at times. It is alleged that the petitioner introduced them to his wife and family and he used to spend a lot of time with them, especially with the complainant. It is alleged that the petitioner used to call the complainant regularly and would tell her about Guruji miracles and his relationship with him.

5. It is further alleged that the petitioner made her husband and her father-in-law members of the core committee of the mandir and started calling them to the Mandir very frequently and the husband of the complainant started going to mandir 5 times a week due to the persuasions of the petitioner, whereas earlier he used to go only once a week. It is alleged that the marriage of the complainant was a love marriage and she had a very happy and stable family but around 2016-2017 her relations with her in-laws started straining as the petitioner had started poisoning their mind against her by saying that the complainant was not an appropriate daughter-in-law.

6. It is further alleged that the petitioner used to influence her in-laws by saying that the complainant was not taking care of the family as it should be taken and he also used to instigate her in-laws by saying that the complainant was not from an affluent background. It is further alleged that the complainant was preparing for her Civil Services Exams but left her study after her first child and the petitioner made an issue of it. It is alleged that due to the consistent poisoning by the petitioner, some friction started creeping into her relationship with her in-laws and her husband and she started feeling lonely, depressed and isolated. It is alleged that since the petitioner succeeded in getting the complainant isolated from her in-laws and her husband, he manipulated the situation to portray himself as her savior.

7. It is alleged that as the petitioner used to talk nicely and politely with the complainant, so she started disclosing the problems of her matrimonial house to the petitioner, so that he could provide some help through his divine intervention. It is alleged that from the beginning of 2017, the petitioner changed track and started telling the complainant that her husband was having an affair with another woman from the Sangat and started polluting her mind against her husband and his character. It is further alleged that the petitioner's cronies in the sangat used to call her and tell her that her husband was having an affair with a woman in the sangat.

8. It is further alleged that the petitioner was playing a double game by polluting the mind of the complainant against her husband and in-laws and mind of the husband and in-laws against her. It is alleged that the petitioner used to tell the complainant that she was divinely blessed and was meant for bigger things in life and not for the family where she was married, as Guruji always liked self made and independent people and she should also achieve something in life and become independent. It is alleged that as a result of this, her relations with her husband became bad and they stopped cohabiting since October 2017 and were separated for all practical purposes, except that she was staying in the same house to look after her daughters.

9. It is alleged that taking advantage of this situation, the petitioner started spending

more time with her and started giving her all the attentions. The petitioner would call her frequently and whenever, the complainant visited the mandir, the petitioner used to give her and her kids special treatment. It is alleged that the petitioner started calling her family for all functions of the mandir and would spend more and more time with the complainant.

10. It is alleged that on 27.12.2018, petitioner called her and her family to Dugri Mandir for her birthday celebration and while they were there he took her aside and started crying and told her that his relations with his wife have become very bad and she was traumatizing him. It is alleged that petitioner told the complainant that his wife was also having an affair with a man named Vijay from Kuwait who was also part of the sangat and that he was in the process of obtaining divorce. It is alleged that according to the complainant this was a big shock to her as to how guruji's nephew life could be so disturbed and she became extremely emotional on seeing his state.

11. It is alleged that the petitioner asked for her support in his need of hour and the complainant said that she would support him and would be there for him. It is alleged that after that day, the petitioner started calling her and messaging her more frequently. It is alleged that he even took her and her family to Dugri mandir on 03.02.2019. It is alleged that in March 2019, the petitioner alongwith his team visited Dubai for 4-5 days and after return from Dubai on 21.03.2019 on Holi, the petitioner specially came to meet her near her house and simultaneously called her husband to mandir for seva. It is alleged that when the petitioner came to met her, he told her that he had an extremely important information to share with her and stated that while he was on flight back from Dubai, he had a dream of Guruji, who told him important things about the future of the sangat and their future, but Guruji had told the petitioner that he should reveal this information to the complainant on a particular date and time and that the complaint would have to wait for few days.

12. It is alleged that on 04.04.2019, petitioner called the complainant and told her that Guruji had fixed the date i.e. 04.04.2019 as the date when he was to reveal Guruji message to her and asked the complainant to come to Motibagh. It is alleged that the complainant called an Ola Cab and left her residence for the said place, where the petitioner was waiting for her.

13. It is alleged that the complainant sat in the car and they proceeded towards the temple and when the complainant asked about the important information, the petitioner replied that he would tell her in few moments and the same would change her life. It is alleged that the petitioner instead of going to the temple took her to a farm house which is adjacent to the temple and in the farm house, to her surprise, nobody was there from the sangat except his driver Suresh and his man Friday, Bilal who had come with him in the car. It is alleged that the petitioner took the complainant inside the farm house and told her, Guruji came in her dream and told him that the complainant was petitioner's wife in the past life and was meant to be his wife in this life as well and the complainant would give him a male heir to carry on the legacy of Guruji.

14. It is alleged that the petitioner convinced her that their meeting was not a coincidence and the destiny had brought them together and that the Guruji's wish and plan would be fulfilled no matter what. It is alleged that the petitioner told the complainant that he had great love and affection for her since the time he had seen her but now Guruji had communicated his wish in the dream and now this wish is to be fulfilled. It is alleged that according to the complainant this was too much for her and she was overwhelmed and tears rolled down her eyes.

15. It is alleged that the petitioner gave her some parshad of Guruji, saying it was the same sachkhand ka parshad, which was given to only few followers. It is alleged that the complainant ate parshad and shortly after that she started feeling a bit light headed and all these happenings were so overwhelming that she did not bother. It is alleged that the petitioner told her that he had got married with his wife in the same very place and this is the place where he would marry the complainant as this place had the blessings of Guruji.

16. It is alleged that the petitioner then took the complainant to the adjacent room where a Havan Kund was ready. According to the complainant, she was so overwhelmed by whatever was happening that she could not comprehend anything. Thereafter, they both took 7 rounds of Havan Kund and the petitioner was chanting verses in Sanskrit. It is alleged that by the time whole exercise was finished a smell of roses permeated the room and it is a strong belief in Sangat that whenever Guruji had to show his presence, smell of roses starts coming there.

17. It is alleged that the petitioner told her that this fragrance was a signal from the Guruji that their marriage had his blessings and this is what Guruji wanted. It is alleged that the complainant by that time was totally dazed and in his thrall and believed that she had married the petitioner and the marriage had blessings of Guruji. It is alleged that thereafter, the petitioner established physical relations with her as her husband in the said farm house, promising that the complainant would bear a son, who would be the true heir and reincarnation of Guruji.

18. It is alleged that the petitioner assured the complainant that as soon as the alimony issue is settled, his divorce with his wife would be finalized and once that was done, he would bring her to stay with him at his house with pomp and show and grand reception. It is alleged that after this they went back to the temple and the complainant came back to her house and thereafter, whenever, she used to visit the temple she was treated with much more respect.

19. It is alleged that whenever, the petitioner wanted to meet the complainant, he would ask her to take a cab and then either Suresh or Bilala would pick her from the decided destination and take her to the farm house near the temple where there used to be no one except Suresh and Bilal. It is further alleged that whenever she used to visit the farm house, the petitioner used to have physical relations with her and the petitioner used to tell her that they were doing something as husband and wife, which was ordained by Guruji to give a heir to the sangat.

20. It is alleged that the complainant had conveyed about her so called marriage with the petitioner to her parents, and coming to know about the same, her parents came all the way from Jhansi to Delhi and petitioner came to meet her mother and sought their blessings on 15.06.2019, and assured her parents that he would very soon take the complainant to live with him at his house at Vasant Kunj, the moment his divorce would finalize.

21. It is alleged that in September 2019, the husband of the complainant came to know about her relations with the petitioner and confronted her and the complainant admitted about the relationship and thereafter they both applied for divorce which was granted on 24.10.2019. It is alleged that when the complainant called the petitioner and informed him, the petitioner told her that he would try to do something but warned her not to disclose anything to her husband and repeatedly told her to reconcile with her husband for the moment and not to disclose anything as it would ruin his position in

the society and that he could not leave his wife and children and the relationship with the complainant would completely damage his life socially and personally.

22. It is alleged by the complainant that at this point of time, she realized that she has been cheated and when she kept on calling the petitioner, initially he gave evasive replies and thereafter started avoiding her calls. It is alleged that the petitioner told the complainant that she should forget that she was or would ever be his wife and when the complainant told her that he had already married her, on this the petitioner told her that Shlokas were not marriage Shlokas and there was no marriage.

23. It is alleged that the petitioner threatened the complainant to keep quiet, otherwise he would destroy and kill her and would harm her daughters and also reminded of the revolver, he used to carry with him. It is alleged that the complainant even called the petitioner's wife and tried to tell her what he had done with her but the wife of the petitioner also took his side and said that her husband had a lot of such women as he was an incarnation of God and the wife of the petitioner also threatened her. It is alleged that in December, 2019 petitioner sent one of his servant who informed the complainant that the petitioner had a number of photos and videos of her, while she was with him at the farm house and if the complainant dare to make any complaint about the incident, he would make sure that these photos and videos would be released in public. It is alleged that the petitioner also threatened that he would get her daughters killed and put false allegations of rape and extortion on her husband.

24. It is alleged that the complainant was also reminded about the incident of one Sevdar Boby Arora who was implicated in false sexual exploitation case by one of the female sevadar of mandir at the behest of the petitioner as the said Boby Arora raised his voice against the petitioner ill deeds. It is alleged by the complainant that she could recollect that while she was at the farm house with the petitioner, Bilal and Suresh used to loitering outside and now the complainant believe that they would have fixed cameras there and have taken her photos and videos. It is also alleged by the complainant that while she used to be with the complainant, he always used to take her mobile phone on the pretext of making some calls and used to keep doing things on her phone and the complainant did not object or even check because she was under the impression that since he had married her he would do her no harm. On the basis of the aforesaid allegations, the present case was registered.

25. I have heard Ld. Sr. counsel for the petitioner as well as Ld. ASC for the State. The counsel for the victim has also assisted the Ld. ASC and made her submissions and also filed reply to the bail application.

26. It is submitted by the Ld. Sr. counsel for the petitioner that the victim and her in-laws including her husband were followers of "Bade Mandir" and the victim was aware of the marital status of the petitioner and that the petitioner is having two children. It is submitted that on the date of the alleged incident, victim was also married and she was having two children, so there was no question of any promise to marry the victim from the side of the petitioner as they both were married and having children, therefore, there was no question of marriage between the two and relations if any were consensual in nature.

27. It is further contended that the affairs of the trust are being looked by all the trustees and not by petitioner alone and he has been implicated in this case for the purpose of extortion. It is further contended that the relations between the petitioner's family and the family of the victim were cordial and they had travelled together for

vacations and had also attended each other family functions. It is further contended that the relations of the petitioner were always cordial with his wife and there was no occasion for him to tell the victim that his relations with his wife were not cordial or that he would be divorcing her.

28. It is contended by the Ld. Sr. counsel for the petitioner that the victim and her husband had been demanding around Rs. 50 Lakh from the petitioner as they had suffered losses in the business which the husband of the complainant was running from his shop at Bhagirath Palace and since the petitioner showed his inability to pay the said amount, which resulted in the registration of this false and fabricated FIR. It is further contended by the Ld. Sr. counsel that after the denial of the money, the victim and her husband threatened the petitioner and his wife to implicate them in false cases.

29. The Ld. Sr. counsel for the petitioner further contended that there is an audio regarding to this effect which clearly exposes the mala fides of the complainant's husband and the transcript of the said audio clip has been placed on record. It is contended that the wife of the petitioner therefore, had lodged a complaint dated 02.09.2019 against the complainant, her husband and her family in P.S. Hauz Khas for threat and extortion.

30. It is further contended that as the complainant and her family continued with threats, so the wife of the petitioner lodged another complaint on 23.10.2019 at a police station in Gurgaon and made another complaint on 25.10.2019 to DCP South District and she further made complaint on 04.11.2019 at P.S. Hauz Khas, but no action have been taken against these complaints.

31. It is further contended that the story of pheras put forth by the complainant is absolutely unbelievable as she was aware about the marital status of the petitioner and also the fact that her family and petitioner's family were at very cordial terms, so nothing was hidden from her. It is further contended that the relations if any between the petitioner and the victim were consensual in nature and according to the victim herself even after 4.4.2019 she established physical relations with the petitioner several times which shows that her actions were voluntary and consensual from the beginning and despite being married with two children the victim kept on having physical relations with the petitioner solely with the aim to have a male heir and never objected even once to the physical relations with the petitioner. It is further contended that there are no allegations of use of force by the petitioner or any resistance by the complainant on 04.04.2019 which shows that the consent of the complainant/victim was voluntary. It is further submitted that as per the victim, on 04.04.2019 after taking pheras and establishing physical relations, the petitioner and the victim had nice talks and thereafter they both left for the temple and there is nothing to suggest that the victim was not in her senses or was not able to understand what was going on, which clearly shows that she was not under intoxication and never lost her consciousness and made physical relations with the petitioner out of her own free will.

32. It is further contended that since the victim from the beginning knew about the marital status of the petitioner, so there was no occasion for the petitioner to have taken the consent by false promise of marriage because according to the complainant's own allegations she took the decision to take seven pheras with the petitioner in order to marry him despite being aware about his marital status and that such a marriage would be illegal and null and void and the child so born would not be a legal child.

33. It is further contended that there is no farm house behind the Bade Mandir as

alleged by the complainant. Rather, there is a plot of land, where the vegetables are planted and small sheds are made and there are other sheds like structures for servants. It is further contended that the victim is still living with her husband and only with the aim to extort money and to involve the petitioner in a false rape case, in collusion with her husband, she has taken mutual divorce from her husband in September 2019.

34. It is further contended that the victim has not come to the court with clean hands as according to her she started living separately from her husband since October 2017 as stated by her before the Family Court at Rohini from where she obtained mutual divorce, whereas, in the present complaint she has stated that she continued living in her matrimonial home even after October 2017 which is evident from her complaint where she has stated that her husband came to know of her relationship with the petitioner in September 2019. It is further contended by the Ld. Sr. counsel for the petitioner that there is an audio recording, wherein Vikram Chopra, husband of the complainant is conversing with the third person claiming to have high level political and police contacts and can spend huge amount to implicate the petitioner in a false case in order to extort money. It is further contended that no dates of alleged physical relations and threats etc. have been mentioned by the victim in the complaint and only one date has been mentioned i.e. 04.04.2019 which clearly shows that her entire story is concocted.

35. It is further contended that when according to the complainant the petitioner was eager to have male heir from the victim as per the Guruji's wish, then why no child was born, when according to the victim they were in physical relationship for about 17 months. It is further contended that the victim never disclosed to her in-laws or her husband about the behavior of the petitioner and his showing special interest in her. It is further contended that the victim concealed her relationship with the petitioner from her husband which shows that the relations between the two if any were consensual and there are no allegations of any force or coercion used by the petitioner against the complainant/victim and the victim was mature enough to know the consequences of her alleged acts.

36. It is further contended that there are no messages/videos/photographs placed on record by the complainant or given to IO in support of her claims regarding sending of messages by the petitioner or his calling frequently to her. It is further contended that even the complainant has made improvements in her statement U/s. 164 Cr.P.C. It is further contended by the counsel for the petitioner that the petitioner has joined the investigation as and when called by the IO and nothing is to be recovered from him.

37. It has been lastly contended by the Ld. Sr. counsel for the petitioner that there is an inordinate delay in the registration of the FIR. It is further contended that the FIR has been got registered solely with the aim to extort money from the petitioner and the complaint has been drafted under legal guidance.

38. Ld. Sr. counsel for the petitioner has relied upon the following judgments:

- (a) Maheshwar Tigga Vs. The State of Jharkhand
- (b) Uday Vs. State of Karnataka [MANU/SC/0162/2003 : (2003) 4 SCC 46]
- (c) Bhushan Lal Khanna Vs. State (Govt. of NCT of Delhi) [MANU/DE/2423/2018 : (2018) 253 DLT 173]
- (d) Kapil Gupta Vs. State [Bail Appln. 2813/2020-Delhi High Court]

- (e) Nirmal Vaid Vs. State NCT of Delhi [MANU/DE/0953/2013 : (2013) 2 DLT (Cri.) 645]
- (f) Rohit Chauhan Vs. State NCT of Delhi
- (g) Pramod Suryabhan Pawar Vs. The State of Maharashtra and Ors. [MANU/SC/1142/2019 : (2019) 9 SCC 608]
- (h) Dhruvaram Murlidhar Sonar Vs. The State of Maharashtra and Ors.
- (i) State Vs. Sandeep [MANU/DE/3208/2019 : (2019) 264 DLT 428]
- (j) X Vs. State
- (k) Vinod Kumar Vs. State of Kerala [MANU/SC/0275/2014 : (2014) 5 SCC 678]
- (l) Bhadresh Bipinbhai Seth Vs. State of Gujrat and another [MANU/SC/0949/2015 : (2016) 1 SCC 152]
- (m) Siddharam Satlingappa Mhetre Vs. State of Maharashtra and Others [MANU/SC/1021/2010 : (2011) 1 SCC 694].
- (n) Arjun Panditrao Khotkar Vs. Kailash Kushanrao Gorantyal and Others. [MANU/SC/0521/2020 : (2020) 7 SCC 1].

39. On the other hand, Ld. ASC for the State has relied upon two Status Reports filed by the State and has argued on the lines of the Status Reports. It is submitted by the Ld. ASC that on 07.09.2020 statement of the victim was recorded U/s. 164 Cr.P.C., wherein she supported her allegations made in the FIR and also stated that she was given opium on different occasions by the petitioner.

40. It is further contended by the Ld. ASC that the alleged place of incident has been photographed and videographed and the place is a well built room with air conditioner duly installed in the room and she contended that as per the IO it is believed that this room has been turned into a servant room after the registration of the FIR as no owner would let enjoy his servants luxury of an air conditioner. It is further contended by the Ld. ASC that the petitioner used to take the victim in 7 star hotel for physical relations which was duly booked by his servant namely Bilala on different occasions. It is contended by the Ld. ASC that the complainant could not give her mobile phone which she has used between April 2019 to September 2019 as the same was with her kids and has been misplaced. It is further submitted by the Ld. ASC that in order to recover the photos and videos of the complainant which were taken by the petitioner at his farm house on 04.04.2019, the petitioner was repeatedly interrogated but despite interrogation, he did not co-operate. It is further submitted that the petitioner on the false pretext of marriage and giving a male heir to the throne of Guruji, established physical relations with the victim/complainant.

41. Reply to the bail application has also been filed on behalf of the victim/complainant.

42. It is submitted in the reply that the petitioner had intoxicated the prosecutrix with drug-laced prashad and sexually exploited her. It is further stated in the reply that the petitioner deceitfully caused the prosecutrix, who was not lawfully married to him, not only to believe that she was lawfully married to him but also to have sexual intercourse with him under that belief.

43. It is further stated in the reply that accused/petitioner threatened the prosecutrix of dire consequences in case she reported the matter. It is further stated that on 10.09.2019 a telephonic conversation took place between the prosecutrix and the accused/petitioner and the transcript of the same is enough to infer not only the nature of relationship which the accused/petitioner deceived the complainant to share with him, and in the said conversation, the prosecutrix was pleading with accused/petitioner that in case their affair was known to her in-laws, her life would be ruined and she would have no place to go. It is further stated that the petitioner falsely assured the prosecutrix that he would buy her a flat in Vasant Kunj.

44. It is further stated that in the complaint lodged by the prosecutrix she has mentioned that petitioner came to meet her mother and sought her blessings on 15.06.2019 and assured that soon he would take the prosecutrix with him at his Vasant Kunj house, the moment his divorce was finalized. It is further stated that during the course of the investigation, there had been an attempt by the petitioner to tamper with the spot which is evident from the order dated 26.09.2020 passed by Sh. Deepak Wasan, Special Judge, NDPS.

45. It is further stated that the petitioner has not come to the Court with clean hands as alongwith the application for bail the petitioner has enclosed a complaint lodged with the police against the husband of the complainant and the perusal of the complaint would show that though the complaint narrates events which transpired post 03.09.2019, the stamp of the Assistant Commissioner of Police, Hauz Khas shows the date as 02.09.2019 as the date of receipt vide diary No. 115-B.

46. It is stated that at no point of time, the husband of the prosecutrix had sought financial assistance from the accused/petitioner. It is further stated that the prosecutrix never claimed that she was not aware about the marital status of the accused/petitioner on the fateful day; rather the deceit practiced by the accused/petitioner consisted in his fraudulently inducing the complainant into belief that since he had two daughter and his wife could not beget another child because of medical complications, he would divorce her; thus he would marry the prosecutrix who was also his wife in previous birth so that the male heir to the throne of the temple could be born from their wedlock. It is stated that the prosecutrix was fraudulently induced into the ceremony of marriage and intercourse was done by the petitioner by virtue of deceit practiced by him while she was under a drug induced stupor.

47. The Ld. counsel for the victim/complainant has argued on the lines of the reply filed. In addition, it is submitted that there was no consent on 04.04.2019, the date on which the petitioner has committed rape on the victim after intoxicating her. It is further submitted that the present case falls U/s. 375 (f) part 2 of IPC and the presumption is there in favour of the victim. It is further submitted that the delay in filing the FIR is not fatal to the case of the victim as the FIR could only be got registered with the intervention of D.C.W.

48. It is further submitted by the counsel for the complainant/victim that the incident dated 04.04.2019 is a case of no consent and the victim was under intoxication and she was unable to understand the nature and the consequences of her acts and the same was obtained by misrepresentation by the petitioner by projecting himself as her husband and that she would be blessed with a male heir to the throne of Guruji as per Guruji wishes and therefore the consent obtained by misrepresentation is not a consent at all.

49. Ld. counsel for the complainant has relied upon the following judgments:

- (a) Gurcharan Singh and Others Vs. State (Delhi Administration) MANU/SC/0420/1978 : (1978) 1 Supreme Court Cases 118.
- (b) Prahlad Singh Bhati Vs. NCT, Delhi and Another MANU/SC/0193/2001 : (2001) 4 Supreme Court Cases 280.
- (c) Ram Govind Upadhyay Vs. Sudarshan Singh and Others MANU/SC/0203/2002 : (2002) 3 Supreme Court Cases 598.
- (d) Uday Vs. State of Karnataka MANU/SC/0162/2003 : (2003) 4 Supreme Court Cases 46.
- (e) Kalyan Chandra Sarkar Vs. Rajesh Ranjan Alias Pappu Yadav and Another MANU/SC/0214/2004 : (2004) 7 Supreme Court Cases 528.
- (f) State of U.P. Through CBI Vs. Amarmani Tripathi MANU/SC/0677/2005 : (2005) 8 Supreme Court Cases 21.
- (g) Prasanta Kumar Sarkar Vs. Ashis Chatterjee and another MANU/SC/0916/2010 : (2010) 14 Supreme Court Cases 496.
- (h) Ash Mohammad Vs. Shiv Raj Singh alias Lalla Babu and another MANU/SC/0758/2012 : (2012) 9 Supreme Court Cases 446.
- (i) Neeru Yadav Vs. State of Uttar Pradesh and another MANU/SC/1208/2014 : (2014) 16 Supreme Court Cases 508.
- (j) State of Orissa Vs. Mahimananda Mishra MANU/SC/1011/2018 : (2018) 10 Supreme Court Cases 516.
- (k) Mahipal Vs. Rajesh Kumar alias Polia and another MANU/SC/1677/2019 : (2020) 2 Supreme Court Cases 118.
- (l) Chandra Shashi Vs. Anil Kumar Verma MANU/SC/0558/1995 : (1995) 1 Supreme Court Cases 421.
- (m) Afzal and Another Vs. State of Haryana and Others MANU/SC/0590/1996 : (1996) 7 Supreme Court Cases 397.
- (n) Yedla Srinivasa Rao Vs. State of A.P. MANU/SC/8531/2006 : (2006) 11 Supreme Court Cases 615.
- (o) Sanjay Tyagi Vs. State
- (p) Anurag Soni Vs. State of Chhattisgarh MANU/SC/0522/2019 : (2019) 13 Supreme Court Cases 1.
- (q) A Vs. State of Uttar Pradesh and Another MANU/SC/0745/2020 : (2020) 10 Supreme Court Cases 505.

50. I have gone through the judgments relied upon by the counsel for both the parties. As far as the judgments relied upon by the Ld. Sr. counsel for the petitioner are concerned, all the judgments deal with the situation, where there is or no misrepresentation of fact and as to under what circumstances the relationship between

the parties can be said to be a consensual relationship.

51. As far as the judgments relied upon by the counsel for the victim/complainant are concerned, they mainly deal with the considerations and parameters which are to be considered at the time of grant of bail and what shall the court take into consideration before granting or rejecting the bail, whether it is a bail under section 437 Cr.P.C., 438 Cr.P.C. and U/s. 439 Cr.P.C. The counsel for the complainant/victim has also relied upon two judgments i.e. Yedla Srinivasa Rao Vs. State of A.P. MANU/SC/8531/2006 : (2006) 11 Supreme Court Cases 615 and Uday Vs. State of Karnataka MANU/SC/0162/2003 : (2003) 4 Supreme Court Cases 46 but the same are not applicable to the facts of the present case, as in these two cases, the victims were minor unmarried girls which is not so in the present case.

52. It is a settled position of law, that every case is to be dealt, based on its individual factual matrix and no set principles or straight jacket formula can be applied, specifically while dealing with bail matters where only prima facie view can be taken to appreciate the facts under a given case.

53. The severity of the allegations is not the only consideration which should result in denial or the grant of bail to the petitioner. The totality of facts and circumstances deserves to be seen before a person is granted or denied the anticipatory bail. The Supreme Court in case titled Siddharam Satlingappa Mhetre Vs. State of Maharashtra MANU/SC/1021/2010 : (2011) 1 SCC 694 has laid down that the Court should be loath to reject the grant of anticipatory bail inasmuch as it impinges on the personal liberty of a person. Meaning thereby, unless and until there is an imminent and a great imperative to have a custodial interrogation of an accused, the anticipatory bail does not deserve to be denied.

54. In the present case, as per the FIR, the victim met with the petitioner for the first time in the year 2013 as her husband and in-laws were deeply involved with the Sangat. The victim and her husband and petitioner and his family they all were known to each other for 6 years prior to the date of incident and they had gone out on trips number of times and they had also been attending family functions at each other's place. According to the victim, the petitioner created friction between her husband and her in-laws and projected himself as her savior, so the victim started confiding in the petitioner and she came close to him. According to the victim, because of the poisoning of her mind by the petitioner she distanced herself from her husband and in-laws and even stopped cohabiting with her husband since October 2017. But strangely enough, neither the husband of the victim nor her in-laws asked her the reasons for her distancing herself from the family and even her husband did not ask the reason as to why she stopped cohabiting.

55. According to the victim, the petitioner polluted her mind against her husband and in-laws, but strangely enough, neither the victim asked anything from her in-laws and husband nor they asked anything from the victim in regard to her indifferent conduct. According to the victim, the petitioner had gone to such an extent that he told the victim that her husband was having an affair with a lady in Sangat but again from the contents of the FIR it appears that she did not bother to confront her husband on this aspect also.

56. According to the victim, in order to win over her, the petitioner started showing the sad side of his life in order to gain her sympathy and support, which according to the victim she gave him as she was disturbed how nephew of Guruji can be having such a

sorry state of affairs. It is pertinent to note here that till 04.04.2019 which the date of the incident the petitioner has not even once told the victim that he would marry her. Though according to the victim he has stated that because of the affair of his wife he would be seeking divorce but no promise was given to the victim that thereafter he would marry her.

57. As per the allegations in the FIR it was on 04.04.2019 which is the date of incident that the petitioner asked the victim to meet her at Motibagh, from where the petitioner took the victim to a farm house near the temple. As per the allegations in the FIR, the petitioner told the victim that she was his wife in his previous life and in this life also she is to be her wife and give a male heir to the throne of Guruji. Now one cannot lose sight of the fact that the petitioner is a married man with two children, the fact which was known to the victim and the victim on the said date was also a married lady with two children. So in any case, there could not have been a valid marriage between the two. According to the victim, she was so overwhelmed by the words and actions of the petitioner and that she would be the giver of a male heir to the throne of Guruji, so she could not comprehend anything. Further, the allegations are that the victim was given some Sachkhand Prasad as a result of which she became light headed and even took pheras with the petitioner and entered into physical relations with him as man and wife. There are no allegations of any violence being committed or any intoxicant having been given to the victim or she having lost her consciousness.

58. As per the FIR, even thereafter, the petitioner and victim kept on establishing physical relations for months together. The victim is an educated lady and even preparing for her civil services examination was well aware that there was no possibility of any legal marriage between the two as they both were having living spouses and children on the said date and no proceedings have been initiated by either of them to seek divorce. The victim is a matured and educated lady having adequate intelligence and maturity to understand the significance of the act which she was doing and she was aware that both of them were already married having children and nevertheless she entered into a relationship akin to marriage with the expectation that the petitioner will divorce his wife and she would give a male heir to the throne of Guruji. It was only when the petitioner failed to divorce his wife that the present FIR was got registered after a delay of about a year.

59. The Ld. defence counsel has vehemently argued that there is an unexplained delay in registering the FIR and the FIR has been registered with the object to extort money from the petitioner. However, according to the counsel for the petitioner, the victim has to run from pillar to post to get the FIR registered as the petitioner is an influential man and only with the intervention of the DCW the FIR could be registered. The delay in registering the FIR is not always fatal specially in heinous offence like rape but in the instant case and looking into its peculiar facts and circumstances, what will be the fate of this delay on the case of the prosecution will only be seen at the time of trial.

60. Now even assuming the allegations against the petitioner to be correct, at best, a case of consent of the victim for contracting marriage and providing a legal heir to the throne of the Guruji having been obtained by fraud, intoxication, misrepresentation is made out. Then this fact does not require any custodial interrogation because the complainant/victim herself has to testify before the court as and when the petitioner is put to trial, as to whether her consent was obtained by misrepresentation or fraud or through intoxication. It is also not the case that any force, threat or violence were used by the petitioner at any point of time.

61. The contention of the Ld. ASC that the telephone instrument is required to be recovered also does not convince me as sufficient ground for denying the grant of anticipatory bail. It is not denied by either of the parties that the conversation by using certain telephone numbers and WhatsApp messages and calls were made between the parties. This information has already been made available or got recovered and both the parties are relying upon various WhatsApp communications which can be proved during the trial.

62. In the instant case, as per the Status Report, the petitioner has joined the investigation number of times but according to the Status Report, the petitioner has not co-operated in the investigation as he has failed to supply his mobile instrument from which according to the victim, he used to make calls to her. It is also evident from the Status report that the victim and her relatives were called for investigation and they were asked to provide their mobile phones but they had failed to do so. And even as per the Status Report, the victim has stated that she cannot give her mobile phone which she has used between April 2019 to September 2019 as the same was with her kids and has been misplaced. Moreover, there are no allegations in the FIR that the petitioner had ever taken the photographs or made the videos of the act between the two.

63. There are two more considerations which are being taken into account for grant of anticipatory bail. Firstly, the petitioner has a fixed place of residence and according to the victim/complainant, he is the care taker of "Bade Mandir", so there appears to be no chance of his fleeing away from the process of law or in other words, he has roots in the society and no such apprehension has been expressed by the prosecution.

64. So far as the allegations of the petitioner tampering with the evidence or threatening the witnesses are concerned, the victim in this regard has placed on record three complaints, which have been made regarding the threats extended by the Sangat to her in-laws. As per the status report, on 23.11.2020, during the course of investigation, in order to verify the allegations of complainant that one person from Sangat namely Sushil Pahwa who is the co-accused in this case has threatened the complainant, but when this was inquired into and Sushil Pahwa was called for investigation, he told that Vikram Chopra (husband of the complainant) who is his friend had called him by sending his location but there is nothing in the Status Report to suggest that he threatened the complainant or her husband in regard to this case. In any case, this aspect of the matter can be taken care of by putting up stringent condition on the petitioner.

65. It has also been argued by the counsel for the victim that the petitioner has tampered with the place of the incident which according to her is also evident from the Status Report and the order of the Sessions Judge by virtue of which the bail application of the petitioner was dismissed. As per the Status Report, the victim has identified the place where the alleged marriage took place between her and the petitioner on 04.04.2019. The Status Report further reveals that the said place was videographed and photographed and it is a well built room with air conditioner installed in the room. The Status Report further states that it is believed that this room is turned into a servant room after registration of FIR as no owner would afford to give his servant the luxury of an air conditioner. Petitioner has placed on record photos, showing the condition of the alleged place of incident. Now whether it was a luxurious or it was a dilapidated room of farm house, the same is a matter of trial as to what type of room it was and would be revealed by the victim when she appears in the witness box. In any case this aspect of the matter can be taken care of by putting stringent condition on the petitioner.

66. During the course of the arguments, it was submitted by the Ld. Sr. counsel for the petitioner that the victim has made major improvements in her statement recorded U/s. 164 Cr.P.C. which was recorded on 07.09.2020, so as to cover what she has left in her complaint which is a well drafted complaint under some legal guidance. On the other hand, the counsel for the victim/complainant has submitted that the petitioner could not have access to the statement of the victim recorded U/s. 164 Cr.P.C. and on this she has relied upon "A versus State of Uttar Pradesh and another" MANU/SC/0745/2020 : (2020) 10 SCC 505. The Ld. Sr. counsel for the petitioner has stated that the petitioner never had access to the statement of the victim U/s. 164Cr.P.C. and it has also not been filed alongwith the petition, however, whatever submissions have been made in regard to the statement U/s. 164 Cr.P.C., the same has been made on the basis of the status report and on the basis of the submissions made by the Ld. APP before the Court of Sessions during the hearing of the bail application.

67. As far as improvements in the statement of the victim recorded U/s. 164 Cr.P.C. is concerned, this is not the stage to analyze such improvements and to form an opinion because at this stage, the court has to see prima facie case and not to deal with the evidence in detail.

68. Taking into totality the facts and circumstances of this case into account, as observed hereinabove the aspect of the physical relations between the petitioner and the victim being consensual or otherwise are a matter of trial. The petitioner thus, in the event of arrest is allowed to be released on anticipatory bail on his furnishing a personal bond in the sum of Rs. 2,00,000/- with two sureties of the like amount to the satisfaction of the IO/SHO/MM concerned subject to the following conditions:-

- (i) That the petitioner shall make himself available for the purpose of investigation by the IO and shall join the investigation as and when called by the IO.
- (ii) He shall not leave the country without the permission of the trial court;
- (iii) He shall not threaten the complainant, her family members and any other witness of this case.
- (iv) He shall not tamper with the evidence.

69. It is made clear that in case these conditions are violated, the complainant or the prosecutor shall be free to move an appropriate application for revocation of the grant of bail to the present petitioner.

70. Subject to the aforesaid conditions, the petition is allowed and disposed of accordingly. All pending applications (if any) are also disposed of.

71. Nothing stated hereinabove shall tantamount to the expression of any opinion on the merits of this case.

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