2025:AHC:179341

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL MISC. BAIL APPLICATION No. - 33358 of 2025

Neeraj Kumar -

.....Applicant(s)

Versus

State of U.P.

.....Opposite Party(s)

Counsel for Applicant(s) : Poonam, Shailendra Pratap Subodh

Counsel for Opposite Party(s) : G.A.

AFR

Court No. - 65

HON'BLE DR. GAUTAM CHOWDHARY, J.

1. Vakalatnama on behalf of the informant has been filed today in the Court by Sri Satendra Kumar, learned counsel, is taken on record.

2. Heard learned counsel for the applicant, learned counsel for the informant, Sri Chandan Singh learned A.G.A for the State and perused the record.

3. According to the F.I.R., allegations, the victim was in telephonic contact with the applicant since 2022 and the applicant had assured the victim to marry her. In the year 2023, the applicant called her for the first time to meet him at Pratap Hotel, where the accused-applicant had committed rape against her wishes and also got prepared a video. Thereafter, on the threatening to viral the video, the applicant had several times committed rape upon her at Leelas Hotel. On 10.06.2025 when the victim asked the applicant to marry, the applicant abused and refused to marry her.

4. Learned counsel for the applicant has submitted that the

victim in the F.I.R. has alleged that she was in telephonic contact with the applicant since 2022 and that the applicant had assured her to marry. Learned counsel further submitted that for the first time, the applicant had called to meet her at Pratap Hotel, where the applicant had committed rape against her wishes. He further submits that prior to meeting in the year 2023, there was no meeting between the applicant and victim and that the victim, only to make out a case, has alleged in the F.I.R., that the applicant had promised her to solemnise marriage. Learned counsel further argued that the victim in her statement recorded under Section 180 of B.N.S.S., has averred that she met with the applicant in the year 2022 and were in love with each other and the applicant promised to marry her and also provide financial assistance to maintain her. It is also averred that he called her at Pratap Hotel at Belthara Road, where physical relationship was also established and also vermilion her and when she asked to marry her, the applicant refused to marry, whereas the victim in her statement recorded under Section 183 of B.N.S.S., has specifically stated that she was in relationship with the applicant since last four years and were living as husband and wife, physical relations were also established but now the applicant has refused to marry. Learned counsel also argued that there is a material contradiction in the statement of the victim recorded under Section 180 and 183 of B.N.S.S., as well as in F.I.R. version. He further contends that the victim is a consenting party without there being any promise to marry, thus no offence under Section 69 of B.N.S. is made out against the applicant. It is thus contended that the applicant has been falsely implicated in the present case due to ulterior motive. Several other submissions in order to demonstrate the falsity of the allegations made against the applicant have also been placed before the Court. The circumstances which, according to the counsel, led to the false implication of the accused have also been mentioned. It has also been assured on behalf of the applicant that he is ready to cooperate with the process of law

and shall faithfully make himself available before the court whenever required and is also ready to accept all the conditions which the Court may deem fit to impose upon him. He next submits that applicant is languishing in jail since 19.07.2025.

5. Per contra, learned A.G.A. as well as learned counsel for the informant have opposed the prayer for bail of the applicant by contending that the innocence of the applicant cannot be adjudged at pre trial stage, therefore, he does not deserve any indulgence. In case the applicant is released on bail he will misuse the liberty of bail.

6. Before proceeding further, it is necessary to peruse Section 69 of Bhartiya Nyaya Sanhita, which is quoted below:-

> *" Whoever, by deceitful means or by making promise to marry a woman without any intention of fulfilling the same, and has sexual intercourse with her, such sexual intercourse not amounting to the offence of rape, shall be punished with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine."*
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> ***Explanation:*** *"deceitful means" shall include the false promise of employment or promotion, inducement or marring after suppressing identity."*

7. Hon'ble Apex Court in the matter of ***Mahesh Damu Khare Vs. The State of Maharastra and another*** reported in ***2024 SCC On Line SC 3471***, has held in paragraph no. 26, 27 and 31 as under:-

> "*26. In the present case, the nature of relationship between the appellant and the complainant can be characterised by the following attributes:*
>
> *(i) The appellant and the complainant were acquainted with each other since 2008. The complainant herself admits that the appellant has been in physical relationship since then till 2017 without protest in spite of alleging that the appellant*

had done so without her consent.

(ii) The physical relationship was going on routinely. But the complainant in her complaint states that after she got a rented room in Shirvane, Nerul Sector 1, Navi Mumbai, in December, 2010, the appellant used to come every day and had sexual intercourse everyday, though without her consent and by giving false promise of marriage.

(iii) The complainant does not appear to be a naive and gullible woman who was susceptible to deceit while maintaining
physical relationship with the appellant and the allegation of false promise surfaced only when the appellant refused to provide further financial and other assistance.

(iv) The conduct of the complainant clearly shows that she is a mature person clearly capable of understanding the consequences of her acts and she was fully aware of the kind of illicit relationship she was maintaining with a married person.
(v) The complainant was fully aware that the appellant was already married and had two wives, though one of them was not keeping well.

27.Thus, from the above it appears that it is more of an extra-marital affair during the aforesaid period without any insistence by the complainant for getting married to the appellant. The fact that the complainant continued to have a physical relationship for a long time without any insistence on marriage would indicate the unlikelihood of any such promise made by the appellant for marrying her and it rather indicates that the relationship was a consensual one.

In our opinion, the longer the duration of the physical relationship between the partners without protest and insistence by the female partner for marriage would be indicative of a consensual relationship rather than a

> *relationship based on false promise of marriage by the male partner and thus, based on misconception of fact.*
>
> (emphasis supplied)
>
> *31. In our view if criminality is to be attached to such prolonged physical relationship at a very belated stage, it can lead to serious consequences. It will open the scope for imputing criminality to such long term relationships after turning sour, as such an allegation can be made even at a belated stage to drag a person in the juggernaut of stringent criminal process. There is always a danger of attributing criminal intent to an otherwise disturbed civil relationship of which the Court must also be mindful."*

7. It is borne out from record that the informant/victim is major. The informant/victim has averred in the F.I.R., that she was in telephonic contact with the applicant since 2022, who assured her to marry and for the first time in the year 2023, the applicant called her to meet at Pratap Hotel, where the accused-applicant had committed rape against her wishes and also prepared a video. Thereafter, on threatening to viral the video, the applicant had committed rape several times upon her at Leelas Hotel and when the victim on 10.06.2025 asked the applicant to marry, the applicant abused and refused to marry her. The victim in her statement recorded under Section 180 of B.N.S.S., has stated that she met with the applicant in the year 2022 and both were in love with each other. The applicant promised to marry her, who also used to pay her to maintain herself, whereas in her statement recorded under Section 183 of B.N.S.S., she has stated that she was in relationship with the applicant for the last four years and were living as husband and wife now he refused to marry.

8. Taking into consideration the F.I.R. averments, it is borne out that the victim was in telephonic conversation with the applicant since 2022 and for the first time in the year 2023 when she met with the applicant at Pratap Hotel, she was raped

by the applicant against her wishes and therefore, there was no promise to marry furthermore, the applicant was threatening to viral the video but there is no whisper about the threatening to viral the video either in her statement recorded under Sections 180 and 183 of B.N.S.S. In her statement recorded under Section 180 of B.N.S.S., she has stated that both were in love with each other, who also used to provide financial assistance to maintain her and the applicant had promised to marry her but in her statement recorded under Section 183 of B.N.S.S., she has stated that she was in relationship with the applicant for the last four years and were living as husband and wife, which also demonstrate that prior to establishing physical relationship, there is no averment of promise to marry in her statement recorded under Section 183 of B.N.S.S. It is also evident that there is material inconsistencies in the statement of the victim recorded under Sections 180 and 183 of B.NS.S. as well F.I.R., averments. It appears that physical relationship between the applicant and the victim was without protest and there was no insistence by victim for marriage as she was in relationship with the applicant for the last four years as has been averred in her statement recorded under Section 183 of B.N.S.S., which indicates the consensual relationship between the two rather than a relationship based on false promise of marriage by the applicant. The consent of the informant/victim is also evident from the fact that she met the applicant in a public place i.e. hotel. Had she been forced to establish physical relation by the applicant, she would have ample opportunity to raise alarm. That is not the case here. In view of the foregoing discussion, this Court is of the opinion that ingredients of Section 69 of B.N.S.S., is not attracted in the present case.

8. Considering the entire facts and circumstances of the case, submissions of learned counsel for the parties, nature of evidence and all attending facts and circumstances of the case, without expressing any opinion on merits of the case, this Court is of the view that the applicant has made out a case for

bail. Hence the bail application is allowed.

9. Let applicant **Neeraj Kumar** involved in Case Crime No.195 of 2025 under Sections 69, 352 B.N.S., Police Station Haldharpur, District Mau be released on bail on furnishing a personal bond and two local heavy sureties each of the like amount to the satisfaction of the court concerned subject to the following conditions:-

i) The applicant shall not tamper with the prosecution evidence.

ii) The applicant shall not threaten or harass the prosecution witnesses.

iii) The applicant shall appear on the date fixed by the trial court.

iv) The applicant shall not commit an offence similar to the offence of which the applicant is accused, or suspected of the commission.

v) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade such person from disclosing facts to the Court or to any police officer or tamper with the evidence.

10. In case of breach of any of the above condition, the trial Court shall be at liberty to cancel the bail of the applicant in accordance with law.

October 9, 2025
S.Ali

(Dr. Gautam Chowdhary,J.)

Digitally signed by :-
SHAUKAT ALI
High Court of Judicature at Allahabad