



2025:DHC:5735



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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*Reserved on: 10th July, 2025
Pronounced on: 17th July, 2025*

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BAIL APPLN. 2109/2025

DURGESH KUMAR

Aged about 29 years,
S/o Rajesh Kumar
R/o House No. 274
Sangroli, Kaithal,
Haryana-136021

.....Petitioner

Through: Mr. Ashim Shridhar, Ms. Radhika
Gupta and Ms. Ishika Jain, Advs.

versus

1. THE STATE OF NCT OF DELHI

AND ANR.

Through SHO
PS Maurya Enclave
Pitampura, North-West Delhi
110034

2. XYZ

.....Respondents

Through: Mr. Shoaib Haider, APP for the State
Mr. Lokesh Sharma, Mr. Surjeet and
Mr. Om Sharma, Advs. for the
Complainant.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. *First Bail Application* under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (*hereinafter referred to as "BNSS"*) has been filed



for grant of ***Regular Bail*** to the ***Applicant Durgesh Kumar*** in FIR No. **141/2025** dated 04.04.2025 under Sections 328, 376 and 506 of the Indian Penal Code, 1860 (*hereinafter referred to as "IPC"*) Police Station Maurya Enclave.

2. The Applicant, Durgesh Kumar, is in custody since 11.04.2025.
3. It is submitted that the Applicant, Durgesh Kumar, is a peace-loving and law-abiding citizen, having very good antecedents and has never been accused or implicated in any criminal proceedings whatsoever. The Applicant and the Complainant met each other through social media Application, viz. Instagram in November 2022 and their friendship eventually culminated in physical intimacy between them. The Applicant and the Complainant had friendly relations in the beginning and it is not the case of the Applicant that he promised to marry the Complainant since the very beginning of their relationship. The foundation of their relationship was never under the misconception of fact that the Applicant would marry the Complainant at a later date.
4. The Complainant is a well-educated woman, who claims to be an advocate by profession and was deeply in love with the Applicant. Thus, the Complainant is not a naïve or uneducated woman who was susceptible to deceit while getting into a physical relationship with the Applicant. The Complainant willingly consented to have sexual intercourse with the Applicant with whom she was deeply in love and because she so desired. It is further submitted that the Applicant would regularly extend financial support to the Complainant out of love and affection. After many months of their relationship that the Applicant and the Complainant even discussed marrying each other in due course of time.



5. It is submitted that as per the Complainant, she continued to have a long-term relationship with the Applicant for many years. She has alleged that the Applicant allegedly intoxicated and raped her one night, without disclosing the date or even year of the said alleged incident, although from the allegations levelled in the FIR, the said incident is allegedly from somewhere in 2023. On 04.04.2025, the Complainant made a Complaint for the aforesaid incident after a lapse of more than 2 years and thereafter, FIR No. 141/2025 was lodged against the Applicant.

6. It is claimed that the Complainant is levelling false and extremely vague allegations that the Applicant had forced her to abort on two separate occasions and allegedly recorded her videos/photographs without any iota of proof to remotely substantiate the said allegations. The Complainant has filed the Complaint under emotional distress due to the Applicant requesting some time to marry her and for not being able to extend further financial support to her.

7. It is submitted that the Applicant never obtained any consent of the Complainant on the false pretext of marriage since even as per the case of the Complainant, they had a normal loving relationship since the beginning. It is submitted that the Complainant was aware of the fact that the Applicant was ready and willing to marry her, even though the foundation of their relationship was never 'marriage' but 'love and affection', both being consenting adults.

8. The Applicant moved an application for Bail before the Ld. ASJ, North West District, Rohini Courts, which was dismissed vide Order dated 22.04.2025.



9. The parents of the Applicant also furnished a Joint Undertaking dated 02.05.2025, stating that the Applicant shall marry the Complainant and will further execute a MoU with the Complainant when he shall be released on Bail, along with certain other undertakings. In view of the said Joint Undertaking, the Applicant made an Application for grant of *Interim Bail* before the Ld. Trial Court as the Applicant and Complainant jointly stated that they are willing to get married on 07.05.2025.

10. Therefore, the Applicant was released on interim Bail for the period 17.05.2025 till 05.06.2025 for the purpose of getting married to the Complainant. However, contrary to the undertaking made by the Complainant, which is recorded in the Order dated 07.05.2025, she informed the brother of the Applicant that she has no intention whatsoever to marry the Applicant.

11. It is submitted that the Complainant has also filed ***FIR No. 245/2024 dated 22.06.2024*** registered at PS Raipur, Dehradun against other men on seemingly the same grounds, which shows and proves that she has the modus operandi to implicate men in false and frivolous cases.

12. The Application has been filed on the ***grounds*** that it is a well-settled law that for a promise to be a false promise inducing misconception of fact, it must have been made from the very beginning with an intention to deceive the woman to persuade her to have a physical relationship. It is not the case of the Complainant that the Applicant persuaded her to have a physical relationship since the very beginning as even as per the allegations levelled, both had friendly relations in the beginning.

13. For an offence under Section 375 IPC to be attracted, a promise to marry must be made from the very beginning of the relationship, which even



as per the case of the Complainant, was not there. Reliance has been placed on the case of ***Mahesh Damu Khare v. The State of Maharashtra, SLP Crl. No. 4326/2018.***

14. It is submitted that the Applicant has been arrested on the basis of a false Complaint as the allegations made in the FIR are ex facie false as the foundation of the relationship between them was never ‘marriage’, but in fact, love and affection. The relationship between the Applicant and the Complainant was consensual, both being consenting adults, and they had known each other since 2022 and she had voluntarily agreed to maintain a physical relationship with the Applicant. Thus, the plea of the Complainant that her consent was under a misconception of fact that the Applicant would marry her, is implausible.

15. It is submitted that even if it is assumed that the Applicant allegedly raped the Complainant early into their relationship after intoxicating her, the Complainant, being a mature adult who claims to be an advocate, would not have continued the prolonged relationship which was also a live-in relationship.

16. Reliance has been placed on the judgment of *Uday v. State of Karnataka*, (2003) 4 SCC 46, wherein the Apex Court has held that the consent given by the Prosecutrix to sexual intercourse with a person with whom she is deeply in love on a promise that he would marry her at a later date, cannot be said to be given under a misconception of fact.

17. Further reliance has also been placed on *Sonu @ Subhash v. State of U.P.*, 2021 SCC OnLine SC 181 and *Pramod Suryabhan Pawar v. State of Maharashtra* (2019) 9 SCC 608.



18. It is submitted that as per the allegations in the FIR, the Applicant last established physical relations with the Complainant sometime in 2023 and the present FIR has been registered after a year and after approximately 2 years since the first alleged incident of rape took place, which itself substantiates the case of the Applicant that the present FIR is an afterthought.

19. It is submitted that the Complainant had no intention to marry the Applicant and the same is clear from the perusal of WhatsApp messages addressed by the Complainant to the brother of the Applicant. It is further submitted that the Complainant has a modus operandi as reflected from FIR No. 245/2024, wherein the Petitioner has implicated other men on similar grounds and allegations.

20. It is submitted that the Applicant is entitled to the presumption of innocence and the trial in the present matter is likely to take a long time and as such the Applicant is entitled to be released on bail in terms of the settled legal position i.e., *Bail being the rule and jail an exception*. Reliance has been placed on Jalaluddin Khan v. Union of India, Criminal Appeal No. 3173/2024.

21. The Applicant is a respectable person having deep roots in society and there is no likelihood of the Applicant fleeing from justice. The Applicant further undertakes not to tamper with the evidence or the witnesses in any manner and undertakes to abide by any terms and conditions imposed by this Court, if released on Bail.

22. *Accordingly, it is prayed that the Applicant be released on Bail.*

23. *Status Report has been filed on behalf of the Respondent No.1/State, in which it is stated that a complaint was made by the Complainant where*



she has alleged that in November 2022, she met with the Accused Durgesh Kumar through Instagram. She alleged that the Accused sexually exploited her in September 2023 by intoxicating her and captured her objectionable photo and videos in his mobile. He also made a promise of marriage to manipulate the Complainant and continued sexual relations with her. It is submitted that from the contents of the Complaint, offences under Sections 328/376/506 IPC are made out.

24. Medical examination of the Complainant was conducted at BSA Hospital, Rohini on 05.04.2025 vide MLC No. 903/2025.

25. Statement of the Complainant under Section 183 BNSS was recorded wherein she has corroborated her initial version. The Applicant was arrested on 11.04.2025 and sent to custody. It is submitted that during the investigations, various call recordings and WhatsApp chats have been collected. The Accused is previously involved in case FIR No. 201/2024 under Section 25/3 of the Arms Act, PS Rajpur Dehradun. Chargesheet has been filed before the concerned Court.

26. *It is accordingly prayed that the present Application be dismissed.*

27. *Learned Counsel for the Complainant* submitted that the present application is not maintainable as at the time of filing the same, the Applicant was on interim bail. It is submitted that the Applicant has committed rape of the Complainant on the pretext of marriage and hence, *the present Application is liable to be dismissed.*

28. **Submissions heard and record perused.**

29. The *case of the Prosecutrix* is that around November 2022, she met with the Applicant, Durgesh Kumar, on Instagram and started talking to him like a normal friend. The Applicant told the Prosecutrix that he liked her



very much and expressed his desire to marry her. It is her case that she declined his proposal, stating that she wanted to focus on her future. In response, the Applicant said that they could maintain a good friendship instead. Thereafter, she started getting influenced by his words, started trusting him, and eventually fell in love with the Applicant. Thereafter, the Prosecutrix and the Applicant shifted to Flat No. 63, Third Floor, F1 U Block, Pitampura, Delhi.

30. It is alleged by the Prosecutrix that when they shifted to the said flat, on the same night she woke up and saw that she was not wearing any clothes, and the Applicant was lying next to her in a naked state and all her clothes were lying under the bed, and her entire body was in pain. She further alleged that there were scratches all over her neck and chest and she was experiencing pain in her private parts. According to her, the Applicant had mixed an intoxicating substance in a cold drink, made her unconscious, and raped her without her consent.

31. Thereafter, she confronted the Applicant, who first denied it and later threatened her that he had recorded obscene videos of her and would post them on Facebook and Instagram. The Prosecutrix stayed with the Applicant in the flat for about 6–7 months, during which he came several times and blackmailed her to have sex with him.

32. It is the case of the Applicant that the Complainant is a well-educated woman who claims to be a practicing Advocate and is not someone who could have allegedly been intimidated or influenced in any manner by the Applicant. The Complainant was deeply in love with the Applicant and they were in a live-in relationship for several months, and they had a plan of marrying each other. The Applicant has even given an undertaking before



the Ld. ASJ and he was granted Interim Bail so that he could marry the Complainant.

33. The Apex Court in Dhruvaram Murlidhar Sonar v. State of Maharashtra, (2019) 18 SCC 191, has observed:-

“...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.”

34. The Applicant and the Complainant had developed a close proximity and were in a consensual relationship. They had lived together in Delhi for a short period of time but after some time, the relationship turned sour resulting in the present case with the allegations of force and rape.

35. The Applicant is in Judicial Custody since 11.04.2025 and the chargesheet stands filed. The Chargesheet already stands filed. The veracity of the allegations levelled against the Applicant shall be tried during trial



which is likely to take some time. No fruitful purpose would be served in keeping the Applicant behind bars for an inordinate long time.

36. *Therefore, considering the totality of circumstances, the accused is granted Regular Bail, on the following terms and conditions:-*

- a) The Petitioner/Accused shall furnish a personal bond of Rs.35,000/- and one surety of the like amount, subject to the satisfaction of the learned Trial Court.
- b) The Petitioner/Accused shall appear before the Court as and when the matter is taken up for hearing;
- c) The Petitioner/Accused shall provide his mobile number/changed mobile number to the IO concerned which shall be kept in working condition at all times;
- d) The Petitioner/Accused shall not indulge in any criminal activity and shall not communicate or intimidate the witnesses.
- e) In case the Petitioner/Accused changes his residential address, the same shall be intimated to learned Trial Court and to the concerned I.O.

37. The copy of this Order be communicated to the concerned Jail Superintendent, as well as, to the learned Trial Court.

38. The Bail Application is accordingly, disposed of.

(NEENA BANSAL KRISHNA)
JUDGE

JULY 17, 2025/pp