



2025:DHC:6760



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI***Reserved on: 3rd July, 2025**Pronounced on: 12th August, 2025*

+ BAIL APPLN. 3180/2023 & CRL.M.A. 31373/2023

SATENDER

.....Petitioner

Through: Mr. N.S. Dalal, Mr. Aman Mudgal, Ms. Nidhi Dalal, Mr. Alok Kumar, Ms. Rachna Dalal and Mr. Karan Mann, Advocates.

versus

STATE GOVT. OF NCT OF DELHI & ANR.

.....Respondents

Through: Mr. Sanjeev Sabharwal, APP for the State with SI Priyanka, P.S. Ambedkar Nagar.
Mr. Mohit Mathur, Sr. Advocate, Mr. Tanmay Mehta, Ms. Manisha Parmar, Ms. Shreya Bhola, Ms. Kanika Handa, Mr. Vignesh and Mr. S. Singh, Advocates for R-2.

CORAM:**HON'BLE MR. JUSTICE AMIT SHARMA****JUDGMENT****AMIT SHARMA, J.**

1. The present application under Section 438 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') has been filed on behalf of the applicant



seeking anticipatory bail in FIR No. 418/2022 under Sections 498A/406 IPC, 376, 313 registered at P.S. Ambedkar Nagar, Delhi.

2. The case of the prosecution against the present applicant as per the FIR registered on behalf of the complainant is that she was married to one Surrender on 04.02.2014, and out of the said wedlock one male child namely "D" was born on 07.07.2016. Immediately after the marriage, the attitude and behaviour of the complainant's husband and other in laws was very rude and cruel and they used to harass her for bringing insufficient dowry. It is alleged that during the said quarrel between the complainant and her husband, i.e., the applicant herein, who is the cousin brother of the previous husband of the complainant used to regularly visit the house of the complainant's in laws and tried to win over the confidence of the complainant by consoling her that in case the complainant seeks divorce from her husband, he would marry her and also adopt the child born from the previous wedlock. It is the case of the complainant that due to persistent approaches and pleadings made by the applicant, the complainant agreed to obtain a divorce from her previous husband and accordingly, with the intervention of the common friends and relatives, a *Panchayat* was held amongst the family members at the residence of the complainant and written documents were executed for divorce. It is further alleged by the complainant that after the said divorce, the applicant entered into a matrimonial alliance with the complainant solemnizing the marriage with the complainant in a temple and also adopted the son of the complainant. It is the case of the complainant that the applicant who is working in Postal Department and is a government servant also got entered the name of the complainant in his official record as his wife. It is further alleged by the complainant that since



25.12.2016, the complainant started living at her parents' house after the documents of divorce were executed with her previous husband. It is further alleged that the applicant often used to come to the complainant's house and one day when the complainant was alone at her home, the applicant forcibly made physical relations with the complainant without her consent and that the complainant told the applicant that she will lodge a complaint against him and, thereafter, the applicant assured the complainant that he will marry her.

3. It is the further case of the complainant that in October 2017, the applicant got married with complainant and both the complainant and applicant started living together as husband and wife at different addresses from time to time i.e., from October 2017 to 02.02.2022. It is further alleged by the complainant that during the stay with the applicant, the complainant got pregnant but the applicant with some ill motive did not agree for the child and got the child aborted in the month of February, 2021 against the wishes of the complainant and subsequently, the complainant was forced to have multiple abortions under threat. It is further the case of the complainant that during this period, the applicant in connivance with the first husband of the complainant convinced the complainant to get a decree of divorce from the competent Court, wherein, the applicant got the settled amount with the complainant's first husband for a sum of Rs. 11,00,000/- fraudulently out of which the first motion petition was filed and a sum of Rs. 5,50,000/- was paid to the complainant by way of a demand draft and the remaining sum of Rs. 5,50,000/- was supposed to be paid at the time of second motion as the applicant wanted the said amount of Rs. 11,00,000/- through the complainant from his cousin brother. It is further alleged by the complainant that after the aforesaid frauds were committed by



the applicant, the applicant left the company of the complainant on 02.02.2022 and as per her knowledge the applicant was contemplating to enter into second matrimonial alliance with another woman and has threatened the complainant that in case the complainant would intervene in the applicant's second matrimonial alliance, he would do away with the life of the complainant as he had been doing with the unborn babies.

4. Learned counsel for the applicant submitted that the present FIR was registered on a false and concocted story by the complainant herein, and the complainant who claimed to be the wife of the applicant was legally married to her previous husband (Surender) till November 2022 *i.e.*, after the registration of the present FIR as the decree of divorce was passed by the Family Court, Palwal in November 2022 only. It is further submitted that the applicant has already joined investigation and has cooperated on every instance and an addition of charges, subsequently, under Sections 376/313 of the IPC are an afterthought to harass the applicant. To support his contention that in the absence of a valid marriage, Section 498-A of IPC does not come into operation, the applicant has relied upon the following judgements:

- i. Atma Ram Vs. State of Chhattisgarh¹
- ii. Shivcharan Lal Verma & Anr. Vs. State of M.P.²

5. *Per contra*, learned APP for the State assisted by learned Senior Counsel for the complainant, submit that in the Status report dated 26.01.2024 authored

¹ 2014(138) AIC 794

² JT (2002)2 SC 641



by Inspector Kishan Kumar, it is stated that during investigation, the address of Madangir, New Delhi was verified, and the owner confirmed that the complainant and applicant were residing at the said address as husband and wife. The status report further notes that during investigation, a letter was sent to the CGHS Head Office, Sector 13, R.K. Puram to verify the CGHS beneficiary details of the complainant and her son issued from the office of the applicant and as per the record, the complainant was shown to be wife of the applicant in the CGHS beneficiary index. During investigation, Sub Inspector Meenakshi obtained the records from Chander Leela Hospital which revealed that complainant had an abortion in the said Hospital. Consequently, Section 313 of the IPC was added on 17.07.2023.

6. Further, in an additional status report dated 03.03.2025, it is stated that during interrogation of the applicant, he disclosed that on 20.04.2022 he got married to one Ms. "J" and out of this wedlock a baby girl was born. It is further stated that during the course of investigation, a notice under Section of the 91 Cr.P.C. was served to the Nodal Officer-Google for collecting the verified copies of G-mail chat done from the G-mail ID of the applicant between 01.10.2021 to 03.10.2021, in which the applicant sent a photo of aborted child and the reply from Google was pending. It was further revealed during the applicant's interrogation, that he downloaded the pictures of aborted babies from the internet for fun. The investigation further reveals that the applicant was interrogated regarding his second mobile phone and the place where he had dumped the aborted baby, however, he disclosed nothing.



7. The additional status report dated 26.05.2025, revealed that during the course of investigation, the statement of two witnesses confirmed that the applicant had put *sindoor* on the hair parting of the complainant and they also exchanged garlands in their presence. The investigation further revealed that the applicant got the CGHS card bearing Beneficiary ID Nos. 7219140 & 7219141 cancelled, which belonged to the complainant and her son, respectively. It is further stated in the status report, that the applicant failed to provide his other mobile phone and hence, further clarity in respect of the abortion on 01.10.2021 could not be established. During course of investigation, the first husband of the complainant, *i.e.*, Surrender, was also interrogated, who then admitted that a written *panchayati* divorce was executed between him and the complainant. Further, in reply received from the PayTM Payment Bank, a transaction of amount of Rs. 1200/- was done by the applicant on 01.10.2021 at 11:18 P.M. through UPI to one Mr. Ashish Kumar in his bank account who is the Director of Indira Hospital, Loni, Ghaziabad at whose Hospital the complainant's abortion was conducted on 01.10.2021. However, when the applicant was interrogated about any interaction between him and Dr. Ashish, he clearly denied having made any transaction to Dr. Ashish. either in cash or in online mode.

8. It is further submitted that a notice under Section 94 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short, 'BNSS') was served to the Assistant Director, Department of the Post Office of Chief Postmaster General, Delhi circle, New Delhi regarding the verification of government accommodation allotted to the applicant in the year 2020, and the family details filled by the applicant in the application form. In the reply received from the Assistant



Director, Department of Post office of the Chief Postmaster General, Delhi circle, New Delhi, it was mentioned that as per the record, Satender MTS was allotted Quarter No. 16/16 (Type-1), R.K. Puram and during the filling of application form, the complainant was shown as his wife and complainant's son was shown as the applicant's son in the details of family members.

9. The audio recording of the applicant and the complainant were collected along with certificate under Section 65-B of the Indian Evidence Act. The stand of the applicant regarding various phone recordings is that he did not remember as he was drunk at that time and hence cannot explain properly, thereby he has not denied the said phone recordings. However, investigation regarding voice sample is being conducted.

10. The Learned ASJ while dismissing the anticipatory bail of the applicant observed that the complainant has handed over multiple photographs and documents to show that she and the applicant were living as husband and wife and the report of Chandra Leela Hospital also corroborates her statement that the applicant had gone along with the complainant as her husband to the Hospital at the time of her abortion. In this manner, the applicant had allegedly gone through false ceremony of marriage with the complainant by putting vermilion (*sindoor*) on the complainant with the intent to make her believe that she was lawfully married to him and, thereafter, he repeatedly established physical relations with her and he also allegedly got the complainant to have abortions. The applicant even had got name of the complainant added in his CGHS medical card as his wife. From year 2017 till 2021, the applicant lived with the complainant by making her believe that they were husband and wife.



11. Heard learned counsels for the parties and perused the records.
12. The present FIR was registered on 10.08.2022 by the complainant with the following subject :-
- “Complaint against Sh. Satender Singh, son of Sh. Khem Chand, presently, resident of H.No. 399, Rohta Patti, Ward No.11, Hodal, Haryana-122006 regarding entering into second matrimonial alliance with another lady notwithstanding the existence of the matrimonial alliance with the present applicant.”
13. In the complaint, the following averments and allegations have been made by the complainant:-
- (a) That she was married to one Surender in accordance with Hindu Rites and Ceremonies on 04.02.2014 and on 07.07.2016 one male child was born out of the wedlock.
- (b) That after the marriage, the attitude and behavior of the complainant's husband and her in-laws towards her was very rude and she was subjected to harassment and cruelty for bringing insufficient dowry. During this period, it is alleged that that the present applicant who is real cousin brother of her previous husband used to visit their house regularly and tried to win over confidence of the complainant by consoling her that in case she takes divorce from her husband he would marry her and give her comfortable life and also adopt the child from her previous wedlock.



(c) It is alleged that initially the complainant was not ready with the offer but due to persistent approaches, she agreed to obtain a divorce from her previous husband and accordingly with the intervention of common friends and relative, a *Panchayat* was held amongst the family members at her residence and written documents were executed for divorce. One copy had been retained by the applicant and one by her previous husband Surrender.

(d) It is alleged that after the divorce with the consent of the *Panchayat*, the applicant entered into a matrimonial alliance with the complainant by solemnizing the marriage in a temple and further adopted son of the complainant from her previous husband.

(e) It is alleged that adoption of the child is also apparent from the aadhar card and other documents wherein the name of the applicant is mentioned as his father. It is also alleged that the applicant was working in Postal department had got her name entered in his official records as his wife.

(f) It is also alleged that on 25.12.2016, the documents of divorce were executed and since then the complainant was living at her parent's house where she was visited by the applicant, who took her out for various sightseeing etc.



(g) It is further alleged that since the applicant used to come to complainant's house often and on one day while the complainant was alone at home, he made physical relationship with her without her consent. It is alleged that when she told the applicant that she will lodge a complaint against him, he assured that he will marry her and thereafter in October, 2017 he got married with the complainant. It is stated thereafter both the applicant and complainant started living at property bearing no. 4th floor, Madangir, New Delhi till June, 2018.

(h) Thereafter, it is stated that the parties shifted to House No.739, Top Floor, Gali No.25, DDA Flats, Madangir, New Delhi and lived there till February, 2019. It is stated that after that the applicant again shifted to C-684, 1st Floor, Madangir, New Delhi and started living here w.e.f.15.02.2019. It is alleged that during the stay with the applicant, the complainant got pregnant and the applicant got the child aborted in the month of February, 2021 against the wishes of the complainant. It is alleged that subsequently also, the applicant got the complainant's pregnancy aborted forcibly under threat and the last child was aborted on 01.10.2021.

(i) It is alleged that during this period, the applicant had to show the decree of divorce in his office. Therefore, in connivance with the complainant's previous husband they got a decree of divorce from competent court. It is alleged that the applicant got settled the amount with her first husband and a sum of Rs. 11,00,000/- was decided towards all claims of the complainant. It is stated that out of Rs. 11,00,000/-, Rs.



5,50,000/- was paid to the complainant by demand draft at the first motion and remaining amount of Rs.5,50,000/- was to be paid at the time of second motion.

(j) It is alleged that the applicant then left the company of the complainant on 02.02.2022 and that she has now come to know that the applicant was contemplating to enter into second matrimonial alliance with some other lady notwithstanding their present matrimonial alliance. It is alleged that when the complainant requested the applicant to desist from entering into second matrimonial alliance, the applicant threatened her to do away with her life as he had done with the life of the unborn babies.

14. It is pertinent to note that the FIR was initially registered under Sections 498A and 406 of the IPC.

15. As per the status report dated 26.01.2024 authored by Insp. Kishan Kumar, SHO, PS. Ambedkar Nagar, it is stated that during the course of investigation Section 313 of the IPC was added on 17.07.2023 and subsequently on the statement of the complainant under Section 164 of the Cr.P.C. recorded on 26.07.2023, Section 376 of the IPC was also added.

16. The applicant has placed on record divorce petition under Section 13 (1) (i) (ia) of the Hindu Marriage Act, 1955 in HMA 261/2017 filed by the previous husband of the complainant before Learned District Judge, Palwal, Haryana which was subsequently withdrawn by him on 16.07.2018. In the said petition apart from complainant who was arrayed as respondent no.1, one 'D.K.' was



also arrayed as respondent no.2. The divorce was sought by the previous husband on the ground of adultery. It is alleged in the said petition that the complainant had left her matrimonial house on 21.12.2016 alongwith valuable and other ornaments without informing her previous husband and started residing with the parents. It is also matter or record that decree by mutual consent was obtained by the complainant from her previous husband on 01.11.2022. The sum of Rs. 11,00,000/- handed over to the complainant by demand draft is also an admitted fact.

17. The prosecution has placed on record various documents as pointed out hereinbefore to show that the applicant had been showing the complainant as his wife and her child from previous marriage to be his child. Various statements have been placed on record to show that the complainant and applicant were living as husband and wife. In fact, it is the case of the complainant herself that the marriage was solemnized with the applicant in the temple in October 2017. As per the FIR, the grievance of the complainant was that despite the matrimonial alliance between them, the applicant was getting married to some other lady.

18. Learned counsel for the applicant had vehemently argued that since the marriage of the complainant with her previous husband had been annulled by decree of divorce on 01.11.2022 therefore, there could not have been a valid marriage between the present applicant and complainant. To counter the same, it has been argued on behalf of the prosecution as well as the complainant that prior to obtaining formal divorce, divorce with the previous husband had been obtained at *Panchayat* which was on 25.12.2016. Although it is alleged that



document to this effect was executed between the parties, however, the said document has not seen light of the day. As per the FIR, there were 2 copies made of the document, one was obtained by the present applicant and the other was by previous husband of the complainant. Statement of her previous husband has been recorded by the Investigating Officer, who stated that there was settlement, however, copy of the settlement was with the complainant and one which he has, he will look for it in his house and if he could find he would submit it to the Investigating Officer. Statement of one Rajender Kumar, Counsellor, Ward No. 13 was also recorded who states that there was some settlement between the complainant and her husband and copy of the same has been given to both the parties.

19. It is also alleged that between period of February 2021 to 01.10.2021 the applicant made the complainant to abort thrice. The prosecution has also placed reliance on certain chats between the complainant and applicant to corroborate the allegation of abortion as well as certain hospital records to establish the allegation of abortion. The transcripts have been placed on record to show that the applicant had thrown the fetus in some drain.

20. The thrust of the allegation is that the applicant had made sexual relations with the complainant on false promise to marry. Hon'ble Supreme Court in **Jaspal Singh Kaural vs. State of NCT of Delhi & Anr.**³. The facts in the said case was that the FIR had been registered against the applicant therein on the allegation that he had established physical relationship with the complainant

³ (2025) 5 SCC 756



with the promise to marry her and take care of the 2 children. The allegation was to the effect that the appellant therein was known to the complainant since 2011 prior to their respective marriages, however, their love rekindled in 2016 amongst the matrimonial life.

21. The facts in the said judgment are stated as follows:-

“3. It is the case of Respondent 2 complainant that she was in a relationship with the appellant since 2016, who was living in Canada at the time, and had come to India, and met her for the first time on 5-2-2017. On that day, he had met Respondent 2 complainant in his brother's rental house in Dwarka and established physical relationship with her on the promise that he will marry her after obtaining divorce from his first wife. It is alleged that the appellant harassed the complainant into obtaining a divorce from her husband, and had subsequently, also spoken to and assured the first husband, that he would marry Respondent 2 complainant and take good care of her and her children.

4. The appellant purportedly lived with Respondent 2 at her house for twenty five days, where he sexually harassed her, and told her that if she refused to establish physical relations with him, he would not marry her. The complainant has alleged that she obtained divorce from her husband in 2019, on the assurance from the appellant, that he will marry her; however, on 20-5-2021, the appellant refused to marry her and even threatened to kill her children. Subsequently thereof, FIR No. 281/2021 dated 5-6-2021 was registered upon the complaint filed by Respondent 2 complainant, when the appellant failed to appear before Mahila Police Station for counselling and mediation.

5. During the investigation, the appellant admitted to having physical relations with Respondent 2 complainant, and paying for the *mangalsutra* with his initials “Jas” on them. The investigation finally culminated into a charge-sheet on 15-5-2022, under Sections 376/506IPC against the appellant.



22. In the said case, the chargesheet against the appellant therein was filed under Sections 376/506 of the IPC, however he was discharged by the learned Trial Court. The said order of discharge was set aside by the High Court in a revision petition filed against the same. The Hon'ble Supreme Court while examining the relevant law observed and held as under:-

“13. At the outset, we refer to the ratio in *Naim Ahamed v. State (NCT of Delhi)* [*Naim Ahamed v. State (NCT of Delhi)*, (2023) 15 SCC 385] whereby this Hon'ble Court had decided a similar matter, wherein allegedly, the prosecutrix had also given her consent for a sexual relationship with the appellant-accused, upon an assurance to marry. The prosecutrix, who was herself a married woman having three children, had continued to have such relationship with the appellant-accused, at least for about five years till she gave the complaint. In the conspectus of such facts and circumstances, this Court had observed as under : (SCC pp. 398-99, paras 21-22)

“21. 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 the law and the case fell under Clause Secondly of Section 375IPC. 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 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 fulfil 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.

22. In the instant case, the prosecutrix who herself was a married woman having three children, could not be said to have acted under the alleged false promise given by the appellant or under the misconception of fact while giving the consent to have sexual relationship with the appellant. Undisputedly, she continued to have such relationship with him at least for about five years till she gave complaint in the year 2015. Even if the allegations made by her in her deposition before the court, are taken on their face value, then also to construe such allegations as “rape” by the appellant, would be stretching the case too far. The prosecutrix being a married woman and the mother of three children was mature and intelligent enough to understand the significance and the consequences of the moral or immoral quality of act she was consenting to. Even otherwise, if her entire conduct during the course of such relationship with the accused, is closely seen, it appears that she had betrayed her husband and three children by having relationship with the accused, for whom she had developed liking for him. She had gone to stay with him during the subsistence of her marriage with her husband, to live a better life with the accused. Till the time she was impregnated by the accused in the year 2011, and she gave birth to a male child through the loins of the accused, she did not have any complaint against the accused of he having given false promise to marry her or having cheated her. She also visited the native place of the accused in the year 2012 and came to know that he was a married man having children also, still she continued to live with the accused at another premises without any grievance. She even obtained divorce from her husband by mutual consent in 2014, leaving her three children with her husband. It was only in the year 2015 when some disputes must have taken place between them, that she filed the present complaint. The accused in his further statement recorded under Section 313CrPC had stated that she had filed the complaint as he refused to fulfil her demand to pay her huge amount. Thus, having regard to the facts and circumstances of the case, it could not be said by any stretch of imagination that the prosecutrix had given her consent for the sexual relationship with the appellant under the misconception of fact, so as to hold



the appellant guilty of having committed rape within the meaning of Section 375IPC.”

14. The decision in Naim Ahamed [Naim Ahamed v. State (NCT of Delhi), (2023) 15 SCC 385] is squarely applicable to the conspectus of present case. It has been time and again settled by this Hon'ble Court, that the mere fact that physical relations were established pursuant to a promise to marry will not amount to a rape in every case. An offence under Section 375IPC could only be made out, if promise of marriage was made by the accused solely with a view to obtain consent for sexual relations without having any intent of fulfilling said promise from the very beginning, and that such false promise of marriage had a direct bearing on the prosecutrix giving her consent for sexual relations.

15. Upon a bare perusal of the FIR and the charge-sheet, the following facts are clearly established:

15.1. The physical relationship between the appellant and Respondent 2 was consensual from the very beginning and cannot be said to be against the will or without the consent of the prosecutrix. Even if the case of the prosecutrix is accepted, there is no material on record to show that there was any dishonest inducement, or incitement on part of the appellant.

15.2. There is also no material on record, to establish an offence of criminal intimidation under Section 506IPC against the appellant. In fact, it is apparent from the conduct of the appellant, that he was acting in furtherance of the promise to marry. It is the own observation of the High Court, that the appellant had made a promise to marry Respondent 2 and was acting accordingly. The *mangalsutra* being prepared with the initials of the name of Respondent 2 complainant does reflect his intention and promise to marry. However, in the eventuality of a fall out or split between the parties, it cannot be said that the promise to marry was false, and the corresponding conduct dishonest.

15.3 There is also no element of criminality that can be accrued to the appellant, insofar as it is the own case of the prosecutrix,



that she was in a relationship with the appellant, while being in a subsisting marriage. It is also hard to believe that the prosecutrix could have sustained a physical relationship for a prolonged period of five years, while being in a subsisting marriage, and even subsequently obtaining divorce to sustain the relationship. The prolonged period of the relationship, during which the sexual relations continued between the parties, is sufficient to conclude that there was never an element of force or deceit in the relationship. The prosecutrix was thus, conscious and cognizant of the consequences of her actions, and had given her consent after an active and reasoned deliberation.”

23. In the present case, as per the complainant herself, she was living with the applicant as husband and wife since October 2017. The complainant who was already married and having a child from the previous marriage continued to stay with the applicant without any formal decree of divorce. The complainant's case is that the said relationship commenced after the panchayat divorce on applicant's promise that he would marry her and adopt her child. Whether the same in the aforesaid circumstances would amount to false promise to marriage or that she gave her consent for sexual relations under misconception of fact is a matter of trial to be determined by the learned Trial Court at an appropriate stage. But this live in relationship between the complainant and the applicant which admittedly commenced in October 2017 till the filing of the present complaint cannot be ignored for the purpose of the present application. The complainant in the present FIR also makes one allegation with respect to the applicant making physical relationship with her against her will. Although there is no date given by the complainant with regard to the said incident however it is her case that she did not make any complaint against him on his assurance that he will marry her. It is pertinent to note that



this incident as per the complainant, took place after a divorce was obtained with her previous husband in a Panchayat and that too was in furtherance of applicant's alleged assurance that he will marry her and adopt her son. Moreover, the fact remains that the complainant continued to live with the applicant thereafter till the filing of the present complaint.

24. Similarly, it is pertinent to note that the first allegation of forcible abortion as per the complaint was on 15.02.2021. However, she continued to stay with the applicant and even obtained a decree of divorce from her previous husband after receiving an amount of Rs. 11 lakhs which was admittedly credited to her account. Thus, the allegation of forcible abortion is also disputed question of fact which shall be determined during the course of the trial. One of the grounds to oppose the present application for anticipatory bail is that the mobile phone from which the applicant had forwarded the photographs of the fetus has to be recovered. The aforesaid circumstance is sought to be brought on record to prove that there was an abortion, however whether the same was forcible or not is disputed.

25. The Hon'ble Supreme Court in "*Siddharam Satlingappa Mhetre V. State of Maharashtra and Others*"⁴ while analyzing the law relating to anticipatory bail observed and held as under:

“112. The following factors and parameters can be taken into consideration while dealing with the anticipatory bail:

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

⁴ (2011) 1 SCC 694



- (ii) 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;
- (iii) The possibility of the applicant to flee from justice;
- (iv) The possibility of the accused's likelihood to repeat similar or other offences;
- (v) Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her;
- (vi) Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people;
- (vii) 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 overimplication in the cases is a matter of common knowledge and concern;
- (viii) 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 the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused;
- (ix) The court to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;
- (x) 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."

26. The applicant during the pendency of the present application was given interim protection and he has joined the investigation as and when directed by



the Investigating Officer. The applicant is stated to be a public servant and therefore has roots in society and is not a flight risk.

27. In totality of the facts and circumstances of the case, the present application is allowed. In the event of arrest, the applicant is directed to be released on bail on his furnishing personal bond of Rs. 50,000/- with two sureties of like amount subject to the satisfaction of the Investigating Officer/Arresting Officer, further subject to following conditions:

- i. The applicant shall not leave the country without prior permission of the learned Trial Court.
- ii. The applicant shall intimate the learned Trial Court by way of an affidavit and to the Investigating Officer regarding any change in residential address.
- iii. The applicant shall appear before the learned Trial Court as and when the matter is taken up for hearing.
- iv. The applicant shall join investigation as and when called by the Investigating Officer concerned.
- v. The applicant will not try to influence the witnesses in any manner.
- vi. The applicant shall provide his mobile number to the Investigating Officer and intimate about any change.



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28. The application is allowed and disposed of accordingly.
29. Pending applications, if any, also stand disposed of.
30. Needless to state, nothing mentioned hereinabove is an opinion on the merits of the case and any observations made are only for the purpose of the present bail application.
31. Order be uploaded on the website of this court *forthwith*.

AMIT SHARMA, J.

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