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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% *Judgment delivered on: 20.03.2025*+ **CRL.M.C. 2104/2022 & CRL.M.A. 8894/2022****KANISHK SHARMA**

....Petitioner

Through: Mr. Kushal Kumar, Mr. Akash
Deep Gupta, Mr. Rajan
Malhotra, Advocates.

versus

STATE OF NCT OF DELHI & ANR.

.....Respondents

Through: Mr. Naresh Kumar Chahar,
APP for the State.
Mr. Surbhit Nandan and Mr.
Sandeep Mishra, Advocates
for R-2.

CORAM:**HON'BLE DR. JUSTICE SWARANA KANTA SHARMA****JUDGMENT****DR. SWARANA KANTA SHARMA, J**

1. By way of the present petition, the petitioner seeks quashing of FIR bearing no. 99/2021, registered under Sections 376/377 of the Indian Penal Code, 1860 [hereafter 'IPC'] at Police Station Safdarjung Enclave, New Delhi.

2. Briefly stated, the facts of the present case are that the victim had approached P.S. Station Safdarjung Enclave, New Delhi, alleging that the petitioner herein had established physical relations with her on the false pretext of marriage, on various occasions, since May



2018. It was alleged that the victim had met the petitioner on 17.10.2017 at her workplace, "Teleperformance," in Udyog Vihar, Gurugram, Haryana, where they had been working as colleagues. On 16.12.2017, the petitioner had approached the victim for a romantic relationship, which she had initially refused, but upon his repeated requests, she had agreed to befriend him on 18.12.2017. In January 2018, when the victim had started receiving marriage proposals, she had informed the petitioner, who had assured her of their future together and had persuaded her to reject all other proposals. Subsequently, on 16.02.2018, the petitioner had again proposed her for marriage, which the victim had accepted. In March 2018, the petitioner had taken the victim thrice to Deer Park, Hauz Khas Village, after sunset, where he had attempted to establish physical relations with her. Upon her refusal, he had masturbated in front of her. On one such occasion, he had allegedly forced himself upon her and committed rape. In August 2018, he had again taken her to Deer Park, where he had allegedly performed both anal and vaginal intercourse forcefully, despite her resistance, causing her to bleed. He had then apologized and emotionally manipulated her into continued relations. It was further alleged that the petitioner had repeatedly forced the victim to meet him at his room, where he had engaged in non-consensual anal and vaginal intercourse. On 07.03.2021, despite her resistance, he had performed anal sex, and later vaginal sex, and again, on 15.03.2021, he had engaged in intercourse with her at his room in Gurgaon. Over time, his behavior had changed, and he had started avoiding her. The victim had also financially assisted the



petitioner on multiple occasions, lending him approximately ₹4-5 lakhs, believing in his assurances of a shared future. On 29.03.2021, when the victim had attempted to contact the petitioner, he had ignored her calls and, upon being reached through his brother-in-law, had given a negative response. He had ultimately refused to marry her and to repay the money. Despite meeting her family 4-5 times and assuring them of marriage, he had later refused to fulfill his commitment. Consequently, on 04.05.2021, the victim had lodged a complaint on these allegations, leading to the registration of the present FIR

3. The learned counsel appearing for the petitioner argues that the petitioner and the victim were in a consensual relationship, and both were major at the relevant time. It is further contended that the victim was well aware of potential obstacles to their marriage, including financial constraints and family opposition, particularly due to the age difference between them. The learned counsel argues that, contrary to the victim's claim that she solely bore the expenses during their trips outside Delhi or otherwise, it was, in fact, the petitioner who had primarily covered such costs. This, it is submitted, contradicts the victim's allegation of financial exploitation. It is further contended that from the very inception of their relationship, the victim was under no misconception of fact regarding the petitioner's ability or willingness to marry her. The learned counsel emphasizes that the victim has made significant improvements in her statement recorded under Section 164 of Cr.P.C., which casts doubt



on the veracity of her allegations. Additionally, the learned counsel submits that the victim was deeply invested in the relationship and had persistently requested the petitioner for marriage. It is argued that her insistence on marriage contradicts her allegations, as no reasonable explanation has been provided as to why she would continue seeking matrimony with the petitioner despite her claims of forced unnatural intercourse. Therefore, it is prayed that the present FIR be quashed.

4. On the other hand, the learned APP for the State vehemently opposes the present petition and submits that the allegations against the petitioner are grave and serious in nature. It is contended that the victim has consistently maintained in her statements, including the one recorded under Section 164 of the Code of Criminal Procedure, 1973 [hereafter '*Cr.P.C.*'], that the petitioner had repeatedly established physical relations with her on the false pretext of marriage. The material on record *prima facie* establishes that the petitioner had induced the victim into a relationship by making false promises and subsequently exploited her—both physically and financially. The learned APP submits that the petitioner's argument regarding the victim's awareness of financial or familial constraints is a mere afterthought and does not mitigate the allegations of rape and deceit. Accordingly, the learned APP prays that the present petition be dismissed.

5. This Court has **heard** the arguments addressed by learned counsel appearing for both the sides, and has perused the material



placed on record.

6. The allegations against the petitioner, in brief, are that he had established physical relations with the victim on multiple occasions since May 2018 on the false pretext of marriage. It is alleged that he had repeatedly assured her of marriage, persuaded her to reject other proposals, and had induced her into a relationship. On several occasions, including at Deer Park, Hauz Khas Village, and his room in Gurgaon, he had allegedly engaged in non-consensual sexual acts, including unnatural intercourse, despite her resistance. Additionally, the victim claims to have provided him with financial assistance of approximately ₹4-5 lakhs, believing in his commitment to marriage, which he had later refused, ultimately severing contact with her.

7. Consent in the context of sexual offences is a crucial determinant of whether an act amounts to rape or sexual assault. Both Section 376 of IPC and Section 65 of the Bharatiya Nyaya Sanhita, 2023 [hereafter 'BNS'] define rape and emphasize the importance of free, voluntary, and informed consent in sexual relations.

8. Under Explanation 2 to Section 375 of IPC which defines the offence of Rape, consent must be unequivocal, voluntary, and given with full understanding of the consequences of the act. The same principle is incorporated in Explanation II to Section 63 of the BNS, which replaces IPC. Both laws provide that a woman's consent must be given freely, without coercion, fraud, misrepresentation, or undue influence. If consent is obtained by fear, intoxication, deception, or an abuse of authority, it is not legally valid.



9. If a man induces a woman into a physical relationship on false promise of marriage, and at the time of obtaining consent, he had no real intention to marry, then such consent is vitiated and does not amount to free and voluntary consent. This principle applies under Section 376 IPC and Section 65 BNS, making such an act punishable as rape. In cases where the promise of marriage was false from the inception, and the accused never intended to fulfill it, the courts have held that the woman's consent was obtained under misconception of fact, which falls under Section 90 IPC (also retained in BNS) and renders the act punishable under rape provisions.

10. It is relevant to refer to the observations of the Hon'ble Supreme Court in *Anurag Soni v. State of Chhattisgarh*: (2019) 13 SCC 1, where the Court held that if a person, from the very inception, had no intention of marrying the prosecutrix but induced her into a physical relationship on a false promise of marriage, such consent would be vitiated under Section 90 IPC, and the act would constitute rape under Section 375 IPC. The Court observed:

“12. The sum and substance of the aforesaid decisions would be that if it is established and proved that from the inception the accused who gave the promise to the prosecutrix to marry, did not have any intention to marry and the prosecutrix gave the consent for sexual intercourse on such an assurance by the accused that he would marry her, such a consent can be said to be a consent obtained on a misconception of fact as per Section 90 IPC and, in such a case, such a consent would not excuse the offender and such an offender can be said to have committed the rape as defined under Section 375 IPC and can be convicted for the offence under Section 376 IPC.”

11. Courts have emphasized that mere breach of promise is not



sufficient to constitute rape. However, when the promise was made with the intention to deceive, and the woman, relying on such assurance, engages in a physical relationship, it amounts to fraudulently obtained consent, rendering it invalid in the eyes of law.

12. With reference to the present case, the victim alleges that the petitioner had established physical relations with her on multiple occasions under the false pretext of marriage, assuring her of a future together and persuading her to reject other marriage proposals. The record indicates that the petitioner had allegedly repeatedly assured the victim of marriage, engaged in sexual relations with her, and later refused to fulfill his commitment, severing contact with her. Additionally, the victim had allegedly provided financial assistance of approximately ₹4-5 lakhs, further demonstrating her belief in the petitioner's false assurances.

13. Applying the principles laid down in *Anurag Soni v. State of Chhattisgarh* (*supra*), if it is established that the petitioner, from the very inception, had no intention to marry the victim but induced her into a physical relationship by falsely promising marriage, her consent would be vitiated under Section 90 of IPC, rendering the act non-consensual under Section 375 of IPC. Consequently, the alleged acts would amount to rape punishable under Section 376 of IPC.

14. Given these circumstances, the allegations against the petitioner necessitate a full trial, as they disclose a *prima facie* case of sexual exploitation under false assurances, making the quashing of the FIR unwarranted at this stage.



15. The learned counsel for the petitioner argued that the petitioner and the complainant were in a relationship, met each other's families, and had an understanding that they would marry. However, he simultaneously argues that the victim was "obsessed" with the petitioner and unilaterally desired marriage. This contradictory stance weakens the petitioner's defense, as it acknowledges the existence of an understanding of marriage, which forms the foundation of the complainant's allegations regarding the false promise.

16. The argument that the victim should have realized the difficulties in marriage due to being elder to the petitioner is legally untenable and devoid of merit. The petitioner, despite being fully aware of the age difference, actively pursued the relationship, gave assurances of marriage, and induced the victim to make financial and emotional commitments. The burden cannot be unfairly shifted onto the victim to have foreseen the petitioner's future refusal to marry when he himself assured her of a shared future.

17. Further, the submission that a woman must assume additional responsibility and foresee marriage-related difficulties solely because she is elder to her partner is based on a patriarchal and legally flawed premise. A woman's decision to engage in a relationship based on the man's specific promises cannot be dismissed as mere obsession when the man later reneges on his commitment. Such an argument not only lacks legal standing but also reflects a misogynistic perspective that seeks to impose an unreasonable burden on the victim while absolving the petitioner of accountability for his own assurances and



conduct.

18. In light of the petitioner's specific assurances of marriage, the complainant's consent to the physical relationship was premised on a legitimate expectation of marriage. If it is established that the petitioner never intended to marry her from the outset, such consent would be vitiated under Section 90 IPC as one obtained under misconception of fact, thereby attracting liability under Section 375 IPC for rape. The facts of the present case, coupled with the legal position laid down in *Anurag Soni v. State of Chhattisgarh* (*supra*), establish that the allegations warrant judicial scrutiny through trial.

19. Given the *prima-facie* material on record and the gravity of the allegations, this Court finds no justification for quashing the FIR at this stage.

20. Accordingly, the present petition is dismissed, along with pending applications, if any.

21. It is, however, clarified that nothing expressed hereinafter shall tantamount to an expression on the merits of the case.

22. The judgment be uploaded on the website forthwith.

DR. SWARANA KANTA SHARMA, J

MARCH 20, 2025/A