

**HIGH COURT OF TRIPURA
AGARTALA
AB 45 OF 2019**

HON'BLE MR.JUSTICE ARINDAM LODH

31.05.2019

Present:

For the Petitioner(s) : Mr. P.K.Biswas, Sr. Advocate.
Mr. P. Majumder, Advocate.

For the respondent(s) : Mr. B. Choudhury, P.P.

Order

Heard Mr. P.K.Biswas, learned Sr. counsel assisted by Mr. P. Majumder, learned counsel for the accused-petitioner as well as Mr. B. Choudhury, learned P.P. for the State-respondent.

On the basis of a complaint, the instant anticipatory bail application has been filed by the accused-petitioner Sri Dhananjay Tripura, who is wanted in connection with East Agartala Women P.S. Case No. 19/2019, registered under Sections 417/376 of IPC.

One Miss Sumi Debbarma, lodged a written complaint on 19.05.2019 to the O.C. of Mandai Police Station complaining that on the basis of proposal of love and marriage, she agreed and surrendered her body to the sexual desire of the accused-petitioner. The love affairs grew up in the year 2011. On 8th March, 2017, according to custom, engagement ceremony (*Mangalacharan*) was performed in presence of the relatives of both the accused-petitioner and the complainant. After few days, the election of Tripura Legislative Assembly was declared and the accused-petitioner contested the election. After winning the election, according to the complainant, the accused-petitioner appeared to be reluctant to get the complainant married. It is alleged in the complaint that the elder brother of the accused-petitioner had demanded ₹8,00,000/- (Rupees eight lakhs) as dowry from the

complainant. Subsequently, since no specific date would be settled, a meeting was convened at the house of one N.C.Debbarmma, but to no avail. The complainant tried to pacify the accused-petitioner but he denied to marry her and he was not ready to recognize her. The complainant has stated in the complaint that during the period of love affairs she developed physical relationship with the accused-petitioner on the promise of marriage, but, after becoming a Member of Legislative Assembly, the accused-petitioner had cheated her without any rhyme or reason. According to her, she became the victim of fraudulent act of the accused-petitioner.

On the basis of aforesaid facts as surfaced in the complaint, Mr. Biswas, learned Sr. counsel has submitted that no ingredients of Section 376 of IPC was made out as it is a clear case of consensual sex out of love affairs between the complainant and the accused-petitioner.

To substantiate the said submission, Mr. Biswas, learned Sr. counsel has placed reliance on the decision of the Apex Court in ***Shivshankar @ Shiva Rs. State of Karnataka & Anr. dated 6th April, 2018*** in ***Criminal Appeal No. 504 of 2018***, wherein it is found that the accused Shivsankar had filed a petition for quashing the criminal proceeding before the Karnataka High Court. The Karnataka High Court rejected the petition for quashing the proceeding. The Apex Court has found after going through the facts of the case that the complainant herself admitted that she lived with the accused Shivsankar as his wife and on that pretext, the Apex Court had quashed the criminal proceeding.

Mr. Biswas, learned Sr. counsel has also relied upon the case of ***Aloka Kumar Vrs. State of Karnataka & Ors.***, reported in ***(2018) 7 SCC 729***, wherein the Apex Court held that in view of

long cohabitation, the accused can be fastened with the civil liability treating his relationship to be a de facto marriage. In the said case also the Supreme Court found that the complainant and the accused used to be involved in live together relationship for six years.

Mr. Biswas, learned Sr. counsel has also placed reliance, in support of this anticipatory bail application, in ***Tilak Raj Vrs. State of Himachal Pradesh***, reported in ***AIR 2016 SC 406***, wherein the Apex Court after considering the evidence of record has held that the accused-appellant could not be punished for committing offence of rape under Section 376 of IPC due to consensual sex. In the said decision, the Apex Court has observed the story of the prosecutrix regarding sexual intercourse on false promise of marriage as concocted. This is a case where the Supreme Court came to the conclusion on the basis of materials on record and the evidence led by the parties. The instant case is very pre-mature to arrive at such finding. So, I am constrained to take note of the said decision in deciding the anticipatory bail application.

Mr. Biswas, learned Sr. counsel has further relied upon a decision of the Apex Court in ***K.P.Thimmappa Gowda Vrs. State of Karnataka***, reported in ***2011 AIR SCW 2281***, wherein the complainant Ratnamma had lodged a complaint that the accused-appellant did not marry her in spite of promise, however, the Apex Court found that the accused-appellant in an affidavit filed before the Apex Court had stated that he agreed to transfer his two acres of land in favour of the complainant for committing breach of promise to marry the complainant Rathnamma, who also has given

her consent to accept the same. On that pretext, the Apex Court acquitted the accused.

Mr. Biswas, learned Sr. counsel has pressed into service a decision of the Apex Court in ***Siddharam Satlingappa Mhetre Vrs. State of Maharashtra***, reported in ***AIR 2011 SC 312*** wherein the Apex Court has laid down the principles of granting anticipatory bail. I have perused the same.

Mr. Biswas, learned Sr. counsel has also relied upon the decision of ***Anurag Soni Vrs. State of Chhatisgarh***, **Criminal Appeal No.629 of 2019 [arising out of SLP(Criminal) No.618 of 2019]**. After perusal of the facts of the case, it is found that in the said case the girl (complainant) knowing fully well that the marriage of the accused Anurag Soni was settled with another girl, she in her wisdom had continued physical relationship with the accused. On that pretext, the Apex Court held that it was a clear case of consensual sex and the allegation of fraudulent act and cheating to the complainant girl was not sustainable. The Apex Court in ***Anurag (supra)*** has held that there was no misconception of facts or misrepresentation of facts.

Opposing the instant anticipatory bail application, Mr. B. Choudhury, learned P.P. has produced the case diary. Learned P.P. has submitted that this is a clear case of rape and comes within the purview of definition of Section 375 of IPC. He has further submitted that the conduct of the accused proves that from the very inception of the relationship he was not serious about his proposal to marry the complainant girl. According to learned P.P., Mr. Choudhury, the accused-petitioner exploited the girl by way of false promise towards her.

Referring to a decision of the Supreme Court he submitted that – “We must remember that a rapist not only violates victim’s privacy and personal integrity, but inevitably causes serious psychological as well as physical harm in the process. Rape is not merely a physical assault, it is often destructive of the whole personality of the victim. A murderer destroys the physical body of the victim, a rapist degrades the very soul of the helpless female. The courts, therefore, shoulder a great responsibility while trying an accused on the charge of rape. They must deal with such cases without outmost sensitivity. The court should examine the broader probabilities of a case and not get swayed with minor contradictions or insignificant discrepancies in the statement of Prosecutrix, which are not of a fatal nature, to throw out and otherwise reliable prosecution case. If evidence of prosecutrix inspires confidence, it must be relied upon without seeking corroboration of her statement in material particulars...”

In the instant case, the FIR was lodged on 19.05.2019. The Investigating Officer after being entrusted with the process of investigation immediately recorded the statement of the victim under Section 161, Cr.P.C. and also recorded her statement under Section 164(5) of Cr.P.C.

Mr. Choudhury, learned P.P. has further submitted that the accused-petitioner being an M.L.A. has been threatening the witnesses. The accused-petitioner is very powerful in the locality, according to the learned P.P., and the prosecution strongly believes that if the accused is enlarged on anticipatory bail, then material evidence will be destroyed.

In the instant case, it is apparent that “engagement ceremony (*Mangalacharan*)” was performed between the accused-

petitioner and the complainant, but, after being elected as a Member of Tripura Legislative Assembly, the accused-petitioner became reluctant to marry the complainant and his elder brother demanded ₹8,00,000/- (Rupees eight lakhs) from the complainant for the purpose of marriage. The complainant on several occasions had tried to persuade the accused-petitioner to marry her.

In the case diary, it is reported by the Investigating Officer that the accused-petitioner "Sri Dhananjay Tripura threatening local people i.e. near people that not to disclose anything before police while they will come for enquiry at locality". It is also revealed in the report that the accused-petitioner had further threatened the local people that if they divulge anything they would not be allowed to stay in the said village. The informant also reported to the Investigating Officer that on 28.05.2019 at about 14:35 hours one unknown person threatened her to withdraw the case.

Having gone through the complaint of the complainant, I find prima facie material against the accused-petitioner. The present anticipatory bail has been moved at a very premature stage of investigation and at this stage no definite inference can be drawn in regard to the intention of the accused-petitioner. It is a matter of investigation to find out whether it was a consensual sex or the accused-petitioner allured the complainant fraudulently on the false promise of marriage and on misrepresentation of facts. Further, it is also to be investigated as to whether the complainant surrendered her chastity on the basis of misconception of facts as defined in Section 90 of IPC. However, prima facie, it is established that after the engagement ceremony, being noticed the attitude of

the accused-petitioner, she did not develop any physical relationship with the accused-petitioner.

Another material aspects to be considered in this case that the accused-petitioner being a Member of the Tripura Legislative Assembly certainly is a powerful person and the report of the Investigating Officer that the accused-petitioner is threatening constantly to the witnesses and the villagers, at this stage, cannot be ruled out.

Situated thus, I am not inclined to release the accused-petitioner, Sri Dhananjoy Tripura, on anticipatory bail at this stage.

Accordingly, the instant bail application stands rejected and disposed.

Send back the case diary to the learned P.P.

JUDGE

