

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

(205)

CRM-M-32897-2015

Decided on: October 21, 2015.

Samandeep Kumar @ Shamandeep Kumar

.... Petitioner

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI

Present: Mr. Bir Davinder Singh, Advocate, for the petitioner.

Mr. Gazi Mohammad, DAG, Punjab.

Ms. Satinder Kaur, Advocate, for the complainant.

M.M.S. BEDI, J (ORAL)

Petitioner along with 8 others is alleged to have developed physical relationship with the prosecutrix. As per the allegations in the FIR under the influence of some intoxicant administered to her in juice, later on she was made to undergo abortion. The petitioner allegedly allured the prosecutrix to establish physical relationship on the pretext of marrying her.

Learned counsel for the petitioner submits that the petitioner is a young boy of 19 years of age and had an affair with the complainant. The said relationship being not acceptable to the family members, they had stopped meeting. On account of break-up, the petitioner has been falsely implicated in the case.

I have considered the facts and circumstances of the case.

As per the allegations, the petitioner had allured the complainant to indulge in the physical relationship with him. Whether the consent obtained would be sufficient to absolve the petitioner of the criminal liability is not to be determined, at this stage.

Learned counsel for the petitioner has relied upon judgment in **K.P. Thimmappa Gowda Vs. State of Karnataka, 2011 (14) SCC 475** wherein the Apex Court had acquitted the petitioner on the ground that the prosecutrix was more than 16 years of age and was a consenting party and there was delay of eight months in lodging of FIR. In that case also, the prosecutrix had become pregnant and the accused had refused to marry her. The observations in the said judgment are in a case where accused had been acquitted by the trial Court and acquittal order was upheld by the High Court as well. Upholding the acquittal order, the Apex Court had passed this above said judgment.

In the present case, the investigation is at initial stage. The mode in which consent of the petitioner had been obtained will certainly be a determining feature to see if the act of the petitioner falls in any of the exceptions in Section 375 IPC. Merely, because the prosecution agency has found eight named persons innocent is not sufficient enough to give a clean chit and liberty to the petitioner as it is likely to hamper the fair investigation of the matter.

Arguments raised at this stage, may constitute the ground for regular bail at appropriate stage.

No ground is made out for grant of concession of pre-arrest bail to the petitioner.

Dismissed.

(M.M.S. BEDI)
JUDGE

October 21, 2015
harsha