

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

CRM-M-38900 of 2017 (O&M)

Date of decision: 30.10.2017

Shubham

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. S.K. Choudhary, Advocate
for the petitioner(s).

Ms. Anju Arora, Addl. A.G., Punjab
assisted by ASI Nachattar Singh.

Prosecutrix/complainant and
her father Arjan Kumar in person.

Jitendra Chauhan, J. (Oral)

By filing the present petition under Section 438 of the Code of Criminal Procedure, the petitioner has sought anticipatory bail in FIR No.50 dated 27.05.2017, registered under Sections 323, 354-B read with Section 34 of IPC and Section 8 of Protection of Children from Sexual Offences Act, 2012, at Police Station Shahpurkandi, District Pathankot.

It is contended that with the intervention of respectables, the parties have compromised the matter amicably. In fact the prosecutrix was already in the contact of the petitioner and during the

course of investigation, Section 376 read with Section 511 of IPC was deleted. Even during the enquiry, it was found that girl herself called the petitioner.

On the other hand, the learned State counsel opposes the bail application.

Heard.

Prosecutrix as well as her father present in Court heard in person. They state that they have compromised the matter with the petitioner who has expressed regret in writing before the panchayat. Prosecutrix also states that petitioner has not committed rape upon her and only an attempt was made. However, after a detailed hearing, the Court feels that the prosecutrix and her father are trying to conceal the true facts, either they are under pressure or they have been purchased by the accused or both.

Hon'ble the apex Court in State of M.P. Vs. Madan Lal, (2015) 7 Supreme Court Cases 68, has held as under:-

“15. Having stated the aforesaid, ordinarily we would have proceeded to record our formal conclusion, but, an extremely pertinent and pregnant one, another aspect in the context of this case warrants to be addressed. As it seems to us the learned Single Judge has been influenced by the compromise that has been entered into between the accused and the parents of the victim as the victim was a minor. The learned trial Judge had rejected the said application on the ground that the offence was not compoundable. In this context, it is profitable to reproduce

a passage from Shimbhu and Another v. State of Haryana wherein, a three-Judge Bench has ruled thus:- Further, a compromise entered into between the parties cannot be construed as a leading factor based on which lesser punishment can be awarded. Rape is a non-compoundable offence and it is an offence against the society and is not a matter to be left for the parties to compromise and settle. Since the Court cannot always be assured that the consent given by the victim in compromising the case is a genuine consent, there is every chance that she might have been pressurised by the convicts or the trauma undergone by her all the years might have compelled her to opt for a compromise. In fact, accepting this proposition will put an additional burden on the victim. The accused may use all his influence to pressurise her for a compromise. So, in the interest of justice and to avoid unnecessary pressure/harassment to the victim, it would not be safe in considering the compromise arrived at between the parties in rape cases to be a ground for the Court to exercise the discretionary power under the proviso of Section 376(2) IPC.

16. The aforesaid view was expressed while dealing with the imposition of sentence. We would like to clearly state that in a case of rape or attempt of rape, the conception of compromise under no circumstances can really be thought of. These are crimes against the body of a woman which is her own temple. These are offences which suffocate the breath of life and sully the reputation. And reputation, needless to emphasise, is the richest jewel one can conceive of in life. No one would allow it to be extinguished. When a human frame is defiled, the purest treasure, is lost. Dignity of a woman is a part of her non-perishable and immortal self and no one should ever think

of painting it in clay. There cannot be a compromise or settlement as it would be against her honour which matters the most. It is sacrosanct. Sometimes solace is given that the perpetrator of the crime has acceded to enter into wedlock with her which is nothing but putting pressure in an adroit manner; and we say with emphasis that the Courts are to remain absolutely away from this subterfuge to adopt a soft approach to the case, for any kind of liberal approach has to be put in the compartment of spectacular error. Or to put it differently, it would be in the realm of a sanctuary of error. We are compelled to say so as such an attitude reflects lack of sensibility towards the dignity, the elan vital, of a woman. Any kind of liberal approach or thought of mediation in this regard is thoroughly and completely sans legal permissibility. It has to be kept in mind, as has been held in Shyam Narain v. State (NCT of Delhi), (2013) 7 Supreme Court Cases 77 that:- Respect for reputation of women in the society shows the basic civility of a civilised society. No member of society can afford to conceive the idea that he can create a hollow in the honour of a woman. Such thinking is not only lamentable but also deplorable. It would not be an exaggeration to say that the thought of sullyng the physical frame of a woman is the demolition of the accepted civilised norm i.e. physical morality. In such a sphere, impetuosity has no room. The youthful excitement has no place. It should be paramount in everyones mind that, on the one hand, society as a whole cannot preach from the pulpit about social, economic and political equality of the sexes and, on the other, some perverted members of the same society dehumanise the woman by attacking her body and ruining her chastity. It is an assault on the individuality and inherent dignity of a woman with the mindset that she should be elegantly

servile to men.”

In view of the above, this Court is not inclined to accept the prayer made in the present petition, at this stage.

Dismissed.

Anything said herein above shall not be construed as an expression of opinion on the merits of the case.

30.10.2017

sumit.k

(JITENDRA CHAUHAN)
JUDGE

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No