

**In the High Court of Punjab and Haryana
at Chandigarh**

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CRM M 45086 of 2016
Date of Decision: 23.02.2017

Achin Vig

---Petitioner

versus

State of Haryana

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

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Present: Mr. Aman Pal, Advocate
for the petitioner

Mr. R K Doon, AAG, Haryana
for the State of Haryana

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Rekha Mittal, J.

The petitioner prays for grant of regular bail in FIR No. 223 dated 22.10.2016 registered at Women Police Station, Sector 51, Gurgaon, District Gurgaon for offence punishable under Sections 323 and 376 of the Indian Penal Code (in short, 'IPC').

Briefly stated, the allegation against the petitioner are that the complainant met the petitioner on 'TM app' in August 2015; met him in person in October 2015; started dating each other from 04.11.2015 and he forcibly made physical relation on 21.11.2015 night at Manhattan after saying big big things like 'he would marry me', 'he wanted to be with me', 'he loves me', 'he wants to see a huge diamond ring from tiffany's in my finger', 'he wants to marry me in the air'. On 06.10.2016, the petitioner

assaulted the complainant in public at his luxotica society in Mayfield gardens. Second time he committed sexual assault on 22.09.2016 at his place on a fake promise of marriage. He also said a few more things after physical relation i.e. 'I am ur boyfriend and u r my girl friend', 'I wanna spend my life with you', I love you'.

Counsel for the petitioner has submitted that reading of the allegations brought forward in the first information report lodged at the instance of a girl, aged 26 years would make it evident that the complainant and the petitioner came in contact with each other on 'TM App' and had been dating from 04.11.2015. It is further submitted that as per allegations, they had physical relation for the first time on 21.11.2015 but the complaint has been made after about one year. It has been vehemently argued that the complainant had been sending musical greeting cards to the petitioner containing messages that she was in love with the petitioner and even expressed her feelings towards the petitioner by indicating that he (petitioner) probably has someone else in his life. It has also been mentioned by her that she loves the petitioner, disregarding whether the petitioner loves her or not. It is vehemently argued that taking into consideration the allegations set up in the FIR and messages conveyed by the complainant through annexure P4, no offence under Section 376 IPC can be said to be made out even if the petitioner had earlier made a promise to marry the complainant but later the same did not mature into a marital alliance. In support of his contention, he has referred to judgment of the Bombay High Court *Ms Sonali Alfred Jadhav v. State of Maharashtra, 2014(40) R.C.R.(Criminal) 703*.

Another submission made by counsel is that the petitioner was working as a Commercial Pilot whereas the complainant is working in a multinational company. The complainant being an educated girl aged more than 25 years would essentially understand the consequences of dating with a grown up boy working as a Commercial Pilot with whom she had physical relation for the first time in November 2015. In addition, it is argued that the petitioner is in custody for the past about four months and is no longer required for the purpose of investigation as challan has been presented in the Court and conclusion of trial is likely to take its own time.

Counsel for the State has not disputed factual assertions with regard to custody period as well as proceedings being pending before the trial Court. However, it has been submitted that keeping in view gravity of allegations levelled against the petitioner, he does not deserve to be enlarged on bail.

I have heard counsel for the parties, perused the paper book and police records.

Before advertng to the submissions made by counsel for the petitioner, it is appropriate to extract certain observations recorded by the Bombay High Court in the referred authority while dealing with an application for grant of bail in anticipation of arrest for offence punishable under Sections 420, 406, 376, 323 and 506(2) IPC:-

8. However, every breach of promise to marry cannot be said to be either a cheating or rape. A couple in love with each other may be having sexual relationship and realise that they are not compatible and sometimes love between the parties is lost and their relationship dries gradually, then

earlier physical contacts cannot be said as rape. A marriage cannot be imposed, as a search of life partner depends not only on physical compatibility but also on emotional, psychological bonding. It is a matter of choice related to individuals notions of suitability, emotional, psychological comfort and biological requirement. Thus while granting anticipatory bail, all these factors are required to be considered.

A plain reading of the allegations set up in the FIR, the messages/greetings conveyed through Annexure P4 and photographs on record would make it evident that the complainant had a love affair with the petitioner and they had been meeting and enjoying since November 2015. Counsel for the State has not disputed that the petitioner was working as a Commercial Pilot whereas the complainant is an educated girl, working in a multinational company.

Taking into consideration the facts and circumstances obtaining in the present case, when examined in the light of observations recorded by the Bombay High Court, extracted hereinbefore, coupled with the factum that there are no allegations that the petitioner is likely to flee from process of justice, if enlarged on bail, without commenting upon merit of the case, the petitioner is ordered to be released on bail subject to satisfaction of the trial Court. However, he shall abide by the following conditions:-

- (i) that the petitioner shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court

or to any police officer; and

ii) that the petitioner shall not leave India without
previous permission of the Court.

(Rekha Mittal)
Judge

23.02.2017
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No