

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

CRM No. M-630 of 2017

Date of decision: 08.03.2017

Dr. Mahesh Chandra

..... Petitioner.

Versus

State of Punjab and another

..... Respondents.

CORAM: HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Sumit Dua, Advocate, for the petitioner.

Mr. S.S. Gill, DAG, Punjab.

Mr. Umesh Narang, Advocate, for respondent No.2

LISA GILL, J.

The petitioner prays for grant of anticipatory bail in FIR No. 144 dated 12.12.2016 registered under Sections 376,406 and 420 of the Indian Penal Code (for short 'IPC') at Police Station Mattaur Mohali.

It is submitted that the relationship, if any, between the parties was consensual. FIR itself reveals that the complainant was aware of the petitioner being a married person. It is not in dispute that since the last four to five years before lodging of the said FIR, the complainant was not having any personal connection with the petitioner. Therefore, no offence, whatsoever is made out under Section 376 of the IPC. It is further submitted that no offence is made out against the petitioner under Sections 406 and 420 of the IPC as well. The petitioner has been falsely implicated in this case. The petitioner has joined investigation pursuant to order dated 12.01.2017. Learned counsel for the petitioner relies upon the judgment of the Hon'ble Supreme Court in *Vinod Kumar Vs. State of Kerala 2014 (5) SCC 678* to support his contentions.

Learned counsel for the State on instructions from ASI Ranjit

Kumar while not denying that the petitioner has joined investigation pursuant to the interim order passed by this Court has opposed this application. It is submitted that certain recoveries are still to be effected from the petitioner. Furthermore, serious allegations have been levelled against him.

Learned counsel for the complainant vehemently argues that the complainant has been allured by the petitioner with a false promise to marry her. It was due to a misconception formed by her on the false promise of marriage held out by the petitioner that she had relations with him. Thus, it cannot be said that their relationship was consensual. Huge amount of money were given to the petitioner by her. Learned counsel for the complainant relies on the judgment of the Hon'ble Supreme Court in ***State of UP Vs. Naushad 2013 (16) SCC 651 and Shitij Gaur Vs. State of Haryana 2016 (5) RCR (Criminal) 31*** to say that having consensual sex on a false promise of marriage would invite the rigors of Section 376 of the IPC. It is, however, not denied that complainant was not having any personal connection with the petitioner since four to five years of the lodging of the FIR.

I have heard learned counsel for the parties.

It is not in dispute that the complainant is a mature lady. She was married earlier and has one issue from her first marriage. It is not in dispute that the complainant was aware of the marital status of the petitioner. This is so reflected on a bare reading of the FIR itself wherein it is mentioned that the petitioner told the complainant that a divorce case between him and his wife was pending. It is also not disputed that the complainant was not having any personal contact with the petitioner since the last four to five years from the lodging of the above mentioned FIR.

The petitioner has since joined investigation. He has undertaken to join investigation as and when required by the investigating agency. It is also undertaken by the petitioner that he would fully cooperate in the investigation of this case.

There is no allegation that the petitioner is likely to abscond and not be available to face trial or that he is likely to influence the witnesses.

Keeping in view the facts and circumstances of the case, it is considered just and expedient to allow this petition. Resultantly, this petition is allowed. Order dated 12.01.2017 is made absolute.

(LISA GILL)
JUDGE

08.03.2017

PA

Whether speaking/reasoned : *Yes/No.*

Whether reportable : *Yes/No.*