

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

CRM-M-7421-2018(O&M)

Date of decision:-6.7.2018

Konark Sharma

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Puneet Bali, Sr.Advocate with
Mr.Ranjit Saini, Advocate
for the petitioner.

Mr.Rakeshinder Singh Sidhu, AAG, Punjab.

Mr.G.B.S. Dhillon, Advocate
for the complainant.

H.S. MADAAN, J.

This petition for regular bail has been filed by petitioner –
Konark Sharma – an accused in FIR No.143 dated 20.7.2017, under
Sections 406, 420, 323, 376, 377, 506 IPC, registered at Police Station
Model Town, Ludhiana.

Briefly stated, the facts of the case as per the prosecution
story are that the complainant Isha had submitted an application addressed
to Commissioner of Police, Ludhiana seeking registration of FIR against
Konark Sharma (husband), Rattan Sharma (father-in-law), Kiran Sharma

(mother-in-law), Sumti Sharma, Raminder Kaur @ Rammi, Sumedh and Amit Sharma etc. *inter alia* stating that in May, 2013 accused Konark Sharma along with his family members and relatives named therein came to house of the complainant with an intention to defraud the complainant stating that Konark Sharma was not married earlier and was a bachelor and they liked the complainant; that they stated that the money, which the parents of complainant wanted to spent for the marriage function, be given in cash, therefore, parents of the complainant gave Rs.15 lakhs in cash and gold jewellery to them, which was so done in the last week of May, 2013; that later on ring ceremony was also performed on 5.6.2013 itself; that the marriage of complainant was performed with Konark Sharma, thereafter, the complainant and Konark Sharma lived as husband and wife; that Konark Sharma continued having physical relations with the complainant. That both of them had visited various places in the country; that they had attended social functions also; that in September, 2013, the complainant had checked mobile phone of Konark Sharma and came to know that he was already married with a girl named Yukti of Ludhiana and litigation was pending between them, further they were having a child also and that marriage between Konark Sharma and Yukti was subsisting. According to the complainant, she was confined in a room and severely beaten up by Konark Sharma, who threatened that he would get her and her parents killed through gangsters, if the complainant told anything to her parents. In the FIR, there are allegations of maltreatment, harassment of complainant at the hands of Konark Sharma and his family members and allegations of Konark Sharma having unnatural sex with the

complainant despite her protest. There is mention of younger sister of complainant being assaulted by parents of Konark Sharma. It has been mentioned that all the photographs taken at the time of marriage of complainant with Konark Sharma are in possession of the latter, since it was he who had brought the cameraman. On the basis of such application submitted by the complainant, formal FIR was registered. Accused Konark Sharma was arrested. He had filed an application for regular bail in the Court of Sessions but the same was dismissed by learned Additional Sessions Judge, Ludhiana vide order dated 28.11.2017, therefore, the petitioner has approached this Court for grant to similar relief.

Notice of the petition was given to respondent – State and counsel representing the State has put in appearance. The complainant has also appeared through counsel.

I have heard learned counsel for the parties besides going through the record.

Learned counsel for the petitioner has argued that as a matter of fact, no marriage had taken place between petitioner Konark Sharma and the complainant and they were having a live in relationship only; that all the allegations levelled by the complainant are wrong; that the petitioner had submitted an application for conducting an inquiry to the higher police authorities at Jagraon, however, SHO of police station in order to help the complainant side hurriedly prepared and submitted a challan in the Court mentioning therein that if during the inquiry some new facts transpired, then supplementary challan would be submitted; that the challan so filed by the police is dated 14,12,2017, however, the matter

was investigated by S.P.(I), Ludhiana (rural), who not only passed strictures against the lower police official dealing with the case, rather observed that the SHO had proceeded in the case in a very hasty manner by arresting the petitioner further committing cancellation of the case; that this report had been approved by Superintendent of Police, Ludhiana and that Director, Bureau of Investigation, Punjab, Chandigarh had informed the Commissioner of Police, Ludhiana asking for a report as to why challan was filed in the Court and now a supplementary challan has been filed in the Court with the observations that the complainant had got registered FIR on false assertions and as a result of inquiry, it has been found that Konark Sharma and Isha, both being major had been residing together of their own in the form of live in relationship and the Investigating Officer had not carried out the investigation in this case in depth and he hurriedly arrested Konark Sharma showing negligence in the performance of his duties, therefore, cancellation report was being filed, whereas departmental action has been recommended against ASI Rajinder Singh, who had filed the challan. Learned counsel for the petitioner has further argued that the complainant had lodged the FIR only to extract money from the petitioner and the petitioner, who is behind bars since long be granted concession of regular bail.

Whereas, this request is being opposed by the State counsel and counsel representing the complainant. Learned counsel for the complainant has argued that the petitioner is guilty of marrying the complainant by concealing the fact of his first marriage and thereafter he has been perpetrating cruelty upon the complainant, going to the extent of

having unnatural sex with her frequently, torturing her, intimidating her and raising demands of dowry, therefore, he does not deserve to be released on regular bail.

After hearing the rival contentions of the learned counsel for the parties, I find that the main grouse of the complainant is that the petitioner had concealed the factum of his first marriage from her, as such, performing a marriage with her, thereafter maintaining physical relations and going to the extent of having unnatural sex with her. Now the question arises as to whether the complainant has been able to present evidence with regard to petitioner performing marriage with her. The record shows that it is not so. According to the complainant the Photographer, who had taken photographs at the time of her marriage with petitioner had been hired by the petitioner and petitioner is in possession of all those photographs. This contention seems to be somewhat unconvincing. The complainant being unable to place on file any document to show her marriage with the petitioner puts a big question mark over her such claim.

Secondly, in the FIR in question, it is mentioned that the marriage of Konark Sharma was solemnized on 5.6.2013 by putting CHADAR/CHUNNI with the complainant. This can certainly be not termed as a valid marriage since the necessary requirements of a valid Hindu marriage as provided under Section 5 of the Hindu Marriage Act, 1955 are not said to have been performed. If that was so, then the complainant cannot possibly come up with a plea that Konark Sharma had married her concealing his first marriage with one Yukti. It needs to be

mentioned here that after filing of the challan, the higher police officers had inquired into the matter and came to the conclusion that the complainant was having a live in relationship with the petitioner. Both of them being major could do so and even have physical relations with consent. The higher police officers have castigated the police officer, who had statedly hurriedly arrested the petitioner and filed the challan, as such the supplementary challan is to have been prepared and filed in the Court praying for discharge of the present petitioner and cancellation of the FIR. The petitioner is said to be behind bars since 17.9.2017. The trial is at initial stage and its conclusion is likely to take some time. The guilt of the accused shall be determined during the trial. His further detention is not going to serve any purpose.

Accordingly, the petition is allowed. The petitioner be admitted to bail during the pendency of the trial, subject to his furnishing bail bonds and surety bonds to the satisfaction of the trial Court/Chief Judicial Magistrate, Ludhiana, subject to the following conditions:

- (i) he shall appear in the Court on each and every date of hearing;
- (ii) he shall not give any threat or intimidation to the prosecution witnesses; and
- (iii) he shall not leave India without prior permission of the Court and shall surrender his passport, if he has got one, otherwise to furnish affidavit in that regard.

In addition to that the trial Court may impose any term and condition found suitable to ensure that the petitioner does not abscond and

interfere in the trial.

It may be mentioned here that nothing discussed hereinabove shall have any bearing on the merits of the case.

6.7.2018

Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No