

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

CRM-M-7455 of 2019

Date of Decision: 19.3.2019

Naresh

....Petitioner

VERSUS

State of Haryana

....Respondent

CORAM:- HON'BLE MR. JUSTICE RAJ SHEKHAR ATTRI

Present: Mr. Parminder Singh, Advocate
for the petitioner (s).

Mr. Vikas Chopra, DAG, Haryana.

RAJ SHEKHAR ATTRI, J.(Oral)

The present petition has been filed under Section 439 Code of Criminal Procedure (in short, “Cr.P.C”) for grant of regular bail to the petitioner in case FIR No.48 dated 30.5.2018 registered for the offences punishable under Sections 323, 376(2)(n), 506, 509 of Indian Penal Code (for short, “IPC”) at Police Station Women, Panipat.

Heard.

It is stated that the prosecutrix is more than 22 years of age at the relevant time. It is alleged by her that before 30.5.2018, the petitioner is residing with her for the last three years. They were in live-in relation. The petitioner assured her that he will marry her. The accused petitioner committed sexual intercourse with her on the pretext of marriage and now he refused to marry with her. Statement of the prosecutrix has been recorded.

The Hon'ble Supreme Court in **Dr. Dhruvaram Murlidhar**

Sonar v. State of Maharashtra and others, 2019(1) RCR (Criminal) 674, has observed as under:-

“20. Thus, there is a clear distinction between rape and consensual sex. The court, in such cases, must very carefully examine whether the complainant had actually wanted to marry the victim or had mala fide motives and had made a false promise to this effect only to satisfy his lust, as the later falls within the ambit of cheating or deception. There is also a distinction between mere breach of a promise and not fulfilling a false promise. If the accused has not made the promise with the sole intention to seduce the prosecutrix to indulge in sexual acts, such an act would not amount to rape. There may be a case where the prosecutrix agrees to have sexual intercourse on account of her love and passion for the accused and not solely on account of the misconception created by accused, or where an accused, on account of circumstances which he could not have foreseen or which were beyond his control, was unable to marry her despite having every intention to do. Such cases must be treated differently. If the complainant had any mala fide intention and if he had clandestine motives, it is a clear case of rape. The acknowledged consensual physical relationship between the parties would not constitute an offence under Section 376 of the IPC.

21. In the instant case, it is an admitted position that the appellant was serving as a Medical Officer in the Primary Health Centre and the complainant was working as an Assistant

Nurse in the same health centre and that she is a widow. It was alleged by her that the appellant informed her that he is a married man and that he has differences with his wife. Admittedly, they belong to different communities. It is also alleged that the accused/appellant needed a month's time to get their marriage registered. The complainant further states that she had fallen in love with the appellant and that she needed a companion as she was a widow. She has specifically stated that "as I was also a widow and I was also in need of a companion, I agreed to his proposal and since then we were having love affair and accordingly we started residing together. We used to reside sometimes at my home whereas some time at his home." Thus, they were living together, sometimes at her house and sometimes at the residence of the appellant. They were in a relationship with each other for quite some time and enjoyed each other's company. It is also clear that they had been living as such for quite some time together. When she came to know that the appellant had married some other woman, she lodged the complaint. It is not her case that the complainant has forcibly raped her. She had taken a conscious decision after active application of mind to the things that had happened. It is not a case of a passive submission in the face of any psychological pressure exerted and there was a tacit consent and the tacit consent given by her was not the result of a misconception created in her mind. We are of the view that, even if the allegations made in the complaint are taken at their

face value and accepted in their entirety, they do not make out a case against the appellant. We are also of the view that since complainant has failed to prima facie show the commission of rape, the complaint registered under Section 376(2)(b) cannot be sustained.”

Keeping in view the law laid down by Hon'ble Supreme Court as above and without expressing any opinion on merits of the case and keeping in view the fact that conclusion of trial will take considerably long time, the present petition is allowed. Petitioner-Naresh son of Rajender is ordered to be released on regular bail on furnishing bail bond and surety bond to the satisfaction of the concerned trial Court/Chief Judicial Magistrate/Duty Magistrate subject to following terms:-

- (a) The petitioner shall comply with the conditions mentioned in Section 437(3) Cr.P.C.
- (b) In the event of his absence on any date of hearing, the benefit of bail allowed to the petitioner shall stand withdrawn. The trial Court shall be competent to cancel his bail bond and surety bond and proceed to procure his presence in accordance with law. In that eventuality the petitioner shall have to apply for bail afresh.
- (c) He shall not leave the country without the previous permission of the Court.
- (d) He will not visit the vicinity of the prosecutrix where she is residing during the pendency of the trial.

March 19, 2019

Paritosh Kumar

**(RAJ SHEKHAR ATTRI)
JUDGE**

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No