

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

Criminal Misc. No.M-34474 of 2016 (O&M)

Date of Decision: 06.09.2019

Sandeep Kumar

...Petitioner(s)

Versus

State of Haryana

...Respondent(s)

CORAM:- HON'BLE MR. JUSTICE HARI PAL VERMA

Present:- Mr. Ashish Aggarwal, Sr. Advocate with
Mr. Bikram Chaudhary, Advocate
for the petitioner.

Ms. Gaganpreet Kaur, AAG, Haryana.

Mr. Jitender Kumar Sehrawat, Advocate
for the complainant.

HARI PAL VERMA, J. (Oral)

Prayer in this petition filed under Section 438 of the Code of Criminal Procedure, 1973 is for grant of anticipatory bail to the petitioner in case FIR No.560 dated 27.08.2016 under Sections 376(2)(n)/506 IPC registered at Police Station Civil Lines Hisar, District Hisar.

The aforesaid FIR was registered at the behest of the complainant against the petitioner. As per the FIR, the complainant, who was a widow and residing at H.No.14H/1HAU Old Campus, Hisar, got married to the petitioner on 04.03.2007. Her first husband Ramphal Malik had died on 06.10.2002. The petitioner was a student of Animal Husbandry Department, where the complainant was working. After having talks with

the complainant for few days, the petitioner came to her house during the night of 03.03.2007 and committed rape upon her by using force and threatened her (complainant) that in case she discloses this fact to anybody, he (petitioner) would commit suicide. However, on the very next day, i.e. on 04.03.2007, he arranged a *havan* (religious ceremony) and solemnized marriage with the complainant, with an assurance to rehabilitate her and to nourish her three daughters from her first marriage. The family members of the complainant were also present at that time. Thereafter, the petitioner remained with the complainant as her husband. Similarly, the complainant also stayed with him as his wife. The complainant had also helped the petitioner financially so as to enable him to pursue his studies. On 26.07.2016, the petitioner visited her house and had sexual intercourse with her. He arranged food to the complainant and her two daughters Sonia and Sunaina at Hotel Karandeep. Even on 27.07.2016, he did not allow the complainant to go to her office and asked her to take leave. When Sonia and Sunaina (the two daughters) had gone to their school and college, the petitioner again committed rape upon the complainant against her wishes. Thereafter, he left the house saying that he has to go to Gurgaon. On 01.08.2016, the prosecutrix came to know that the petitioner had solemnised second marriage with Monika resident of Village Pali Haal, Azad Nagar on 13.07.2016, without taking divorce from her, despite the fact that the law does not permit such marriage. When the complainant talked to the petitioner, he came to her house and threatened her that this marriage was solemnised by his parents under pressure and in case, she discloses the factum of his marriage with her, he will kill her and nobody

will come to know about her death or he will also commit suicide and the complainant along with her daughters shall be sent to jail. In this manner, the petitioner without taking divorce from the complainant has solemnised another marriage and has been committing rape upon her while staying with her since 2007. He had also prepared an obscene video of the complainant, which she had also seen and now, he has threatened to kill the complainant.

Mr. Ashish Aggarwal, learned senior counsel appearing on behalf of the petitioner-accused, has argued that the petitioner has already joined the investigation in terms of the interim order passed by learned Additional Sessions Judge, Hisar. The complainant has got the instant FIR registered against the petitioner with an intention to settle the matrimonial dispute on her own terms. At the most, the parties were in live-in relationship and they were not married. He has further submitted that assuming, for the sake of arguments, that the petitioner had solemnised marriage with the another lady, namely Monika during subsistence of his earlier marriage, then at the most, the petitioner can be booked for bigamy under Section 494 and not for rape under Section 376 IPC. The offence under Section 494 IPC is otherwise bailable. He has referred to judgment of the Apex Court in the case of **Kanwal Ram & ors. Vs. The Himachal Pradesh Administration** 1966 CriLJ 472 to contend that in order to make out an offence under Section 494 IPC, second marriage must be proved and non-proof of essential ceremonies of such marriage, conviction for bigamy is not justified. The second marriage is a fact, therefore, the essential ceremonies constituting it, must be proved. Admission of such marriage by

the accused in itself is not sufficient evidence for it for the purpose of proving marriage in a case of adultery or bigamy. He has also referred to judgment of the Apex Court in the case of **Indra Sarma Vs. VKV Sarma** 2013 (15) SCC 755 to contend that live-in marriage like relationship is neither a crime nor a sin, though socially unacceptable in this country. The decision to marry or not to marry or to have a heterosexual relationship is intensely personal.

He has further argued that the offence under Section 376 IPC is not attracted in the present case at all. Moreover, the complainant has not solemnised marriage with the petitioner. They were in live-in relationship. This fact is duly substantiated when the prosecutrix was still drawing widow pension for herself and her children. He has further submitted that though in paragraph no.5 of the petition filed by the petitioner, there is a reference that a matrimonial dispute is going on between the parties, being husband and wife and the complainant with an intention to settle the matrimonial dispute on her terms has got the present FIR lodged against the petitioner, but that pleading has wrongly been incorporated and the pleadings made in an anticipatory bail application are not *stricto sensu* binding.

Learned counsel appearing on behalf of the complainant has argued that the petitioner and the complainant have been living together as husband and wife since 2007 to 2016. Moreover, the contents of paragraph no.5 of the petition, wherein the petitioner has admitted his relationship with the complainant, as husband and wife, is a clear admission of the fact that they were living together as husband and wife. Apart from the

averments made in the petition, the petitioner has also submitted his affidavit dated 05.08.2016, duly attested by the Notary Public, Hisar and the same is signed by witnesses, wherein he has stated that he is about 36 years of age and a resident of H.No.74, Azad Nagar, Hisar and he has solemnised his marriage with the complainant on 03.03.2007 as per Hindu rites. Though there were differences between them, but with the intervention of the family members, the matter has been resolved and on the basis of his statement, the complainant had withdrawn her complaint against him. There is a specific recital in the affidavit that once again they are living together as husband and wife and in future, they will have no differences and the petitioner had undertaken therein to perform his responsibilities as a husband.

On the other hand, learned State counsel, while referring to the status report submitted by way of affidavit of Jitender Kumar, HPS, D.S.P., Law and Order, Hisar, has submitted that as per the statement of Monika's father, he had solemnised the marriage of his daughter Monika with the petitioner on 13.07.2016. On the other hand, apart from the averments made in paragraph 5 of the petition, an affidavit dated 05.08.2016 was also submitted by the petitioner, stating therein that he had solemnised marriage with the complainant and they are staying together as husband and wife. He has further submitted that as per the directions of learned Additional Sessions Judge dated 02.09.2016, though the petitioner had joined the investigation but he did not cooperate with the investigating agency. He did not undergo medical examination for the purpose of virility and did not get recovered the obscene video of the complainant. He even did not give

the specimen of his hand writing and therefore, anticipatory bail was declined to him. Therefore, the petitioner has not approached this Court with clean hands.

I have heard learned counsel for the parties.

To reiterate the duty of the Court to uphold dignity of a woman, in the case of **Joseph Shine Vs. Union of India** AIR 2018(4) RCR (Criminal) 480, Hon'ble the Supreme Court has observed that *“Individual dignity has a sanctified realm in a civilized society. The civility of a civilization earns warmth and respect when it respects more the individuality of a woman. Any system treating a woman with indignity, inequity and inequality or discrimination invites the wrath of the Constitution.”*

The allegation against the petitioner, as spelt out in the FIR is that firstly, he had allegedly committed rape upon the prosecutrix against her will on 03.03.2007 when he had come to her house during night time and thereafter, threatened to commit suicide in case she discloses this fact to anybody. Next day, i.e. on 04.03.2007, he solemnized marriage with the petitioner in the presence of her family members and neighbours with an assurance that he will keep the complainant as his wife, with a further promise that he will take care of her daughters born out of the wedlock of her earlier husband Ramphal. Thereafter, the parties started residing together as husband and wife. The complainant stayed with him as his legally wedded wife. On 26.07.2016, the petitioner made physical relations with her. However, on 01.08.2016, the complainant came to know that the petitioner during subsistence of their marriage, has solemnised another

marriage with one Monika on 13.07.2016, without taking divorce from her. When the complainant raised this issue with the petitioner, he threatened the complainant that he will kill her.

The argument raised on behalf of the petitioner is that at the most, the parties were in live-in relationship and the averments made in paragraph 5 of the petition as well as in the affidavit dated 05.08.2016 of the petitioner, whereby he has admitted his marriage with the prosecutrix, were made under some pressure and that live-in marriage like relationship is neither a crime nor a sin, though it may not be acceptable to the society.

However, this Court finds that the present is not a case of live-in relationship. Rather, in the case in hand, in fact, the petitioner has admitted that he has solemnised marriage with the complainant, which is apparent from the averments made in the paragraph no.5 of the petition as well as the affidavit dated 05.08.2018 so submitted by the petitioner. The plea raised on behalf of the petitioner that the aforesaid averments were made under pressure, cannot be accepted at this stage, as the same is required to be proved and may possibly be considered only during the course of trial. There is a specific allegation against the petitioner that despite having solemnised marriage with Monika on 13.07.2007, he has again had sexual intercourse with the complainant against her will on 26.07.2016. It has also come on record that the petitioner was given ample opportunities to cooperate with the investigating agency, during pendency of the application of the petitioner for grant of anticipatory bail before learned Additional Sessions Judge, as reflected in the status report submitted by the DSP concerned, but he did not cooperate with the

investigating agency. He has neither got his medical examination conducted for the purpose of virility nor got the obscene video of the complainant recovered. He also did not give the specimen of his hand writing. It is for these reasons, anticipatory bail was declined to him by the trial Court.

As far as judgment of Apex Court in the case of **Kanwal Ram & ors.** (*supra*), replied on behalf of the petitioner, is concerned, the same has no relevance to the facts and circumstances of the present case, as the father of Monika, who had allegedly solemnised her marriage with petitioner, had got his statement recorded on 13.07.2016 about this marriage. This fact has duly been found mentioned in the status report submitted by Jitender Kumar, HPS, D.S.P., Law and Order, Hisar.

Since the prayer in this petition is for grant of anticipatory bail, at this stage, this Court does not find any good ground to enlarge the petitioner on anticipatory bail, accordingly, the present petition is hereby dismissed.

However, it is made clear that in case the petitioner surrenders before the trial Court and moves an application for grant of regular bail, the trial Court shall make an endeavour to decide the same expeditiously and preferably within a period of one week from the date of such filing.

September 06, 2019
AK

(HARI PAL VERMA)
JUDGE

Whether speaking / reasoned?

Yes / No

Whether reportable?

Yes / No