

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM M-40458 of 2018
Date of Decision: March 13, 2019

KamalPetitioner

Versus

State of Haryana Respondent

CORAM : HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present : Mr. Aman Pal, Advocate
for the petitioner.

Mr. Ripu Daman, AAG, Haryana.

Mr. Manish Soni, Advocate
for the complainant.

FATEH DEEP SINGH, J. (Oral)

Petitioner Kamal, who is in judicial custody since 17.07.2018 has moved this bail application under Section 439 Cr.P.C. in FIR No. 93 dated 16.07.2018 under Sections 313, 376(2)(n), 377 and 506 IPC, Women Police Station, District Gurugram.

The present case was got registered on written complaint of the complainant-Somya Gupta a lady aged around 35 years. In her complaint, the brief allegations are that she was residing in Gurugram

and has a minor son from her previous marriage, who is residing with her brother. It is alleged that she visited the matrimonial site on the web and placed her profile to which the accused had responded. It is thereafter the petitioner and the complainant met each other and after exchanging their details and the background, it is alleged that the accused had assured that he would marry her and to vouch for it, it is alleged that the accused had put sindoor on her forehead and thereafter couple entered into physical relations, during the course of the same, on 23.09.2017, when the complainant had developed three months old pregnancy got aborted the same at the asking of the accused. Thereafter it is alleged that the petitioner has refused to undergo his obligation and has only cheated her leading to the registration of the case and arrest of the petitioner on 17.07.2018.

Shri Aman Pal Advocate for the petitioner submits that both the complainant as well as the accused had left their previous spouses and being grown up were in a relationship for more than one year. It is the own voluntary act of the complainant by virtue of which she has got the foetus aborted and has placed reliance upon Annexure P-1 to hammer home the point that it was with the consent of the complainant and the accused/petitioner, the pregnancy has been aborted and there is no allegations that it was by deception or fraud and has even sought to debate the applicability of offence under Section 376 IPC.

Mr. Ripu Daman, AAG, Haryana assisted by Manish Soni

Advocate for the complainant has opposed bail vociferously arguing that it was an act of fraud, cheating and deception by the accused who had taken the complainant for a ride on the false pretext of marriage and by this fraud made her to submit to his physical needs and even got her pregnancy aborted arguing that the seriousness of the offence does not entitle the petitioner to any relief.

Heard.

The petitioner is behind the bars for more than seven months. It is the own case of both the sides that they are mature persons, who were earlier married and have left their respective spouses. The couple as per their own stand were in a relationship for more than one year. Thus, a debatable issue arises over the attraction of offence under Sections 376 and 377 IPC. Furthermore, as is pointed out by the counsel for the petitioner the consent form carrying consent (Annexure P-1) has been given by the petitioner as well as the complainant to this abortion to the doctor. Even, the counsel for the complainant does not displace the signatures of the complainant thereon. Thus, even the very attraction of offence under Section 313 Cr.P.C. could only be looked into at the time of the trial. The mere submission in view of the offences, for which, the petitioner has been hauled up do not disentitle him to any relief is brushed aside. The fact that culpability, if any, of the petitioner shall be determined at the trial which is not likely to be concluded in the near future. This Court is of the opinion that it is a fit case for grant of bail. Accordingly, the

petitioner is ordered to be released on regular bail to the satisfaction of Chief Judicial Magistrate/Duty Magistrate, concerned.

However, it is made clear that anything observed herein shall not be construed as an expression on the merits of the case.

Disposed off.

March 13, 2019
amit rana

(FATEH DEEP SINGH)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No