

205.

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

CRM-M-25857-2019

Date of decision:02.07.2019

KARAN KUMAR MUTNEJA

... Petitioner

Versus

STATE OF PUNJAB & ANR.

.... Respondents

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

Present: Mr. Anandeshwar Gautam, Advocate,
for the petitioner.

Mr. Sukhbeer Singh, AAG, Punjab,
for respondent No.1.

Mr. Puneet Kumar Bansal, Advocate,
for respondent No.2.

HARI PAL VERMA, J.(Oral)

Prayer in this petition filed under Section 438 Cr.P.C. is for grant of anticipatory bail to the petitioner in a criminal complaint No.36 dated 12.06.2017 titled as “Manjit Kaur @ Jeet Kaur Versus Karan Kumar Mutneja and others” under Section 376 of IPC, pending before the learned Judicial Magistrate Ist Class, Guruharsahai, District Ferozepur.

Briefly stated, respondent No.2-complainant has filed a complaint against the petitioner and other co-accused under Sections 376, 313, 323, 452, 504, 506, 217, 218, 148, 149 of IPC (Annexure P-1) and in the said complaint, the petitioner has been summoned by the learned Sub Divisional Judicial Magistrate, Guru Harsahai to face trial for offence punishable under Section 376 IPC.

Counsel for the petitioner has argued that 10 years ago, the complainant married with one Boor Singh with whom she had a matrimonial dispute including the proceedings under Section 125 Cr.P.C. and vide judgment dated 21.08.2012, learned Sub Divisional Judicial Magistrate, Jalalabad (West) held the complainant entitled to claim maintenance @ Rs.1500/- per month from the said husband Boor Singh. She is a married lady having not taken divorce from her husband. The allegation against the petitioner that he established physical relations with the prosecutrix on the pretext of marriage which is not sustainable more particularly when the complainant has not taken divorce from her husband Boor Singh.

He has further argued that the fact as to whether the petitioner established relations with the complainant on the pretext of marriage, is yet to be proved during the trial. At this stage, the petitioner has been summoned by the Magistrate for 03.07.2019.

Learned counsel for respondent No.2 has argued that the petitioner has made promise of marriage with the complainant and on this pretext, he had established relations with the complainant. From the cohabitation, one son is born to the complainant in September, 2017. He has referred to judgment passed by the Hon'ble Apex Court in ***Criminal Appeal No.629 of 2019***, titled as ***Anurag Soni Versus State of Chhattisgarh, decided on 09.04.2019*** to contend that if an accused establishes physical relations on the pretext of solemnizing marriage with the complainant, he is liable to be convicted. The complainant has taken a panchayati divorce from Boor Singh and it is thereafter, the petitioner has established relations with the complainant.

The argument of the counsel for the complainant that the complainant has taken divorce is again a matter to be adjudicated during trial. In the absence of any decree of divorce, it cannot be *ipso facto* presumed that the complainant has taken divorce from Boor Singh by way of panchayati divorce.

Without making any comments on the validity of the panchayati divorce, if any, but considering the fact that the petitioner has been summoned by the Magistrate and whether the relationship established as consensual or otherwise, is yet to be established during trial, this Court deem it appropriate to admit the petitioner on bail.

Accordingly, in case the petitioner appears before the Magistrate within a week from today, he shall be admitted on bail subject to his furnishing bail bond/surety bond to the satisfaction of the learned Magistrate or any other condition as may be put by the court.

The present petition stands disposed of accordingly.

The observations made hereinabove shall not be construed as an expression on the merits of the case and the Magistrate/trial Court shall decide the case on the basis of available material.

(HARI PAL VERMA)
JUDGE

02.07.2019
sanjeev

Whether speaking/reasoned?	Yes/No
Whether reportable?	Yes/No