

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

CRM-M-28120 of 2019.
Decided on:- July 23, 2019.

Harkrishan Singh.

.....Petitioner.

Versus

State of Punjab.

.....Respondent.

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

Present:- Mr. Govind Goel, Advocate for
Mr. Sourabh Goel, Advocate for the petitioner.

Mr. Harpreet Singh Multani, A.A.G., Punjab.

Mr. Rahul Rampal, Advocate
for the complainant.

HARI PAL VERMA, J.

The petitioner has filed present petition under Section 438 Cr.P.C. for grant of anticipatory bail in FIR No.156 dated 19.06.2019 under Sections 376 and 506 of the Indian Penal Code registered at Police Station City Sri Muktsar Sahib, District Sri Muktsar Sahib.

The aforesaid FIR was registered at the behest of the prosecutrix with the allegations that while giving false assurance of marriage to her, the petitioner had been committing rape upon her. As per the F.I.R., the prosecutrix who is MSc. (I.T.) and was preparing for government job, whereas the petitioner, who is serving as a Constable in Punjab Police, met her about 9 years ago. At that time, the prosecutrix was serving in a private sector. The petitioner had developed physical relations with her. He had taken

her even to his house at village Phullewala, where his father, mother, younger brother and two sisters were present. In the presence of his family members, the petitioner made marriage proposal to the prosecutrix. The petitioner assured her that he will marry her the moment she will succeed in getting some government job.

About 3 years ago, the petitioner had called the prosecutrix to the house of his cousin sister Poonam Rani (Mausi's daughter), where Poonam Rani was already present, who assured the prosecutrix that she will extend help in getting them married. Thereafter, Poonam Rani forcibly sent both the persons i.e. the petitioner and the prosecutrix in a room and rather, bolted the room from outside. During this period, the petitioner committed rape upon her in that room against her wishes. When the prosecutrix started weeping, he (petitioner) again gained confidence that he will marry her and continued to force her to develop physical relations with him. The petitioner used to take her in a hotel at Amritsar, where rape was committed upon her against her wishes. In the record of the hotel, the petitioner had mentioned his relationship with the prosecutrix as her husband. At two different times, abortion was conducted upon the prosecutrix. However, when the prosecutrix asked the petitioner to solemnise marriage, he used to make lame excuses.

A day before registration of the FIR, the prosecutrix had come to know that the petitioner is already married and when she confronted him, he admitted that he is already married. He threatened her that in case she will make any complaint against him, he will viral her obscene photographs and videos on the social media.

Mr. Govind Goel, learned counsel appearing on behalf of the petitioner has argued that the contents of the very FIR indicate that the prosecutrix is a well-qualified lady. She is MSc. (I.T.) and is major about 30 years of age. The allegations of developing physical relations, if any, are consensual and that too since the year 2011. As per the F.I.R., the prosecutrix got pregnant twice, firstly in December, 2011 and then in the year 2013 and both the times, she got her pregnancy terminated on her own by taking contraceptive pills arranged by the petitioner. Thus the prosecutrix remained consenting party.

He has further argued that even after refusal by the petitioner to marry the prosecutrix, both of them kept on meeting each other. The relationship between the parties was known to the family members of the prosecutrix which substantiates the very fact that the relationship between the parties was consensual and, therefore, no offence under Section 376 IPC is made out. They remained in relationship since the year 2011, whereas the present FIR was registered after a delay of about 8 years. There is no medical evidence as regard the commission of the offence of rape and since nothing is required to be recovered in the case, the custodial interrogation of the petitioner is not required. The physical relations started without any assurance of marriage. The prosecutrix could not succeed in persuading her family members for the marriage as they are of different castes.

Learned counsel for the petitioner has relied upon ***Deepak Gulati Versus State of Haryana (2013) 7 Supreme Court Cases*** 675 and ***Dhruvaram Murlidhar Sonar Versus State of Maharashtra 2018 SCC***

Online SC 3100, wherein while referring the earlier judgment in *Shivashankar alias Shiva Versus State of Karnataka and another 2018 SCC Online SC 3106*, the Apex Court has observed that it is difficult to hold that the sexual intercourse in the course of a relationship which has continued for eight years, is 'rape' especially on the face of the complainant's own allegation that they lived together as man and wife. There is a clear distinction between rape and consensual sex and, therefore, the Court in such like cases must examine very carefully whether the accused 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. 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 acts, such an act would not amount to rape.

He has further referred to paragraph No.12 of the judgment in the case of *Anurag Soni Versus State of Chhattisgarh 2019(2) RCR (Criminal) 852* to contend that if it is established and proved that from the inception, the petitioner gave the promise to the prosecutrix to marry, did not have any intention to marry and the prosecutrix gave the consent for sexual intercourse on such an assurance by the accused that he would marry her, such a consent can be said to be a consent obtained on a misconception of fact as per Section 90 IPC and, in such a case, such a consent would not excuse the offence and such an offender can be said to have committed the rape as defined under Section 375 IPC and can be convicted for such an offence. However, so long

as it is not proved that the petitioner gave a promise to the prosecutrix to marry, the petitioner cannot be deprived from his liberty.

On the other hand, learned counsel for the complainant has argued that the allegations against the petitioner are serious. The petitioner is working in disciplined force i.e. in Punjab Police and a man in uniform had been committing rape upon the prosecutrix with an assurance that he will solemnise marriage with her. Moreover, the petitioner was married with some other lady on 28.01.2019 and even thereafter, he has been sexually exploiting the prosecutrix with an assurance that he will marry her.

I have heard learned counsel for the parties.

The precise allegation against the petitioner is that he had established physical relations with the prosecutrix on the pretext that he will marry her. The petitioner, who is serving as a Constable in Punjab Police met the prosecutrix about 9 years ago when she was working in a private sector. He established physical relations with her and developed confidence in her that he will marry her. The prosecutrix was introduced by the petitioner with his family members and the petitioner told the prosecutrix that he will solemnise marriage with her. The petitioner had been repeatedly indulged in sexual activities with the prosecutrix and she was taken different places even to a hotel at Amritsar, where the petitioner made his entry showing his status as a married man with the prosecutrix. At two different times, abortion was conducted upon her. Even after his marriage, the petitioner had been in continuous relationship with the prosecutrix with an assurance that he is still unmarried.

The argument of learned counsel for the petitioner that the prosecutrix is from a different caste and, therefore, her parents did not allow her to solemnise marriage with the petitioner, cannot be accepted more particularly when she is highly qualified lady having M.Sc. (I.T.) degree. Moreover, the argument that the parents of the complainant had declined the prosecutrix to solemnise marriage with the petitioner cannot be accepted as the prosecutrix herself had never refused for such marriage, rather, the petitioner continued with such relations.

The petitioner is a member of disciplined force against whom the prosecutrix has made clear allegations that she has been subjected to sexual exploitation. The petitioner had been continuously committing rape upon her for the last about 8 years on the false pretext of marriage. The prosecutrix had to undergo abortion twice. The petitioner is stated to be in possession of some nude photographs and videos of the prosecutrix and the petitioner is threatening her to upload these photographs and videos on social media. Despite having been married, the petitioner still continued to maintain relations with the prosecutrix. He has been concealing this fact from the prosecutrix and has able to establish relations with the prosecutrix even after his marriage.

Thus, having regard to the judgment of Hon'ble Supreme Court in **Anurag Soni's case (supra)**, this Court is of the considered opinion that the petitioner does not deserve to be admitted on anticipatory bail as the allegations against him are that he gave a false promise to the prosecutrix to marry her and on the pretext of such false promise, he established physical

relations with her. It is on the basis of false promise so made by the petitioner that he will marry the prosecutrix, her consent was obtained by the petitioner. There are allegations to the effect that even after marriage, he has been sexually exploiting the prosecutrix pretending him to be unmarried.

Accordingly, the present petition, being devoid of any merit, is dismissed.

The observations made hereinabove shall not be construed as an expression of opinion on the merits of the case and the trial Court shall decide the case on merits without being influenced with these observations in any manner.

July 23, 2019
Yag Dutt

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned:	Yes
Whether Reportable:	No