

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

CRM-M-37083 of 2019.

Decided on:- September 19, 2019.

Mahesh Mundhra.

.....Petitioner.

Versus

State of Haryana.

.....Respondent.

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

Present:- Mr. Vishwajeet Singh, Advocate
for the petitioner.

Ms. Priyanka Sadar, A.A.G., Haryana.

HARI PAL VERMA, J. (Oral)

This is the second petition filed by the petitioner under Section 439 Cr.P.C. for grant of regular bail in FIR No.408 dated 12.09.2018 under Sections 376, 406, 420 and 506 IPC (Sections 201 and 120-B IPC were added later on) registered at Police Station DLF Phase-I, District Gurugram.

The earlier petition filed by the petitioner i.e. ***CRM-M-10255 of 2019*** was dismissed as withdrawn at that stage vide order dated May 27, 2019 passed by this Court.

Learned counsel for the petitioner has argued that as per the FIR, the complainant came in contact of the petitioner through a social site i.e. cupid.com and Whatsapp. The petitioner proposed the complainant for marriage and in order to make her to believe, the petitioner took her to his

house and introduced with his father. His father gave his consent for marriage. Thereafter, on 01.05.2017, she was taken to Bristol Hotel, Gurugram, where rape was committed upon her. The petitioner assured that he will marry the prosecutrix. On the pretext of bad health condition of his father, he had taken a sum of Rs.21 lakh from her at different points of time. However, when the prosecutrix asked him for marriage, the petitioner not only refused to return the money rather, refused to solemnise marriage with her and threatened the prosecutrix.

He has further contended that the allegation against the petitioner is that he has not only committed sexual assault upon the prosecutrix, rather, usurped money by taking her into confidence. The petitioner is in custody since 18.09.2018. The earlier petition filed by him was dismissed as withdrawn considering his less custody. Now, he is in custody for the last one year. The dispute between the parties is regarding money transaction. The prosecutrix has conveniently withheld the transaction part, though Rs.5.5 lakh was already given to the prosecutrix and a cheque was issued by the father of the petitioner for a sum of Rs.16.5 lakh, which was bounced. The petitioner is ready to pay the said amount of Rs.16.5 lakh to the prosecutrix and he will offer this amount to the prosecutrix before the trial Court.

Learned State counsel, on instructions from ASI Gyaninder Singh, states that out of 13 witnesses cited by the prosecution, 6 witnesses have already been examined in the case. Since the petitioner has established physical relations with the complainant on the pretext of marriage, he is not entitled for bail in view of the law laid down by Hon'ble Apex Court in

Criminal Appeal No.629 of 2019 arising out of **SLP (Crl.) 618 of 2019** titled as **Anurag Soni Versus State of Chhatisgarh** decided on 09.04.2019.

I have heard learned counsel for the parties.

The petitioner is in custody since 18.09.2018. The various documents do reflect that there is some money dispute between the petitioner and prosecutrix and the petitioner has fairly admitted that he is ready to pay Rs.16.5 lakh to the prosecutrix and will make this offer even before the trial Court during the trial. The trial is not likely to be concluded in near future. Therefore, having recourse to the law laid down by Hon'ble Apex Court in **Criminal Appeal No.1165 of 2019** arising out of **SLP (Crl.) 2712 of 2019** titled as **Pramod Suryabhan Pawar Versus The State of Maharashtra and another** decided on 21.08.2019, this Court finds that the allegation as to whether the petitioner has taken consent of the prosecutrix by misconception is yet to be decided. Therefore, the petitioner deserves to be admitted on bail.

Therefore, the present petition is allowed and the petitioner is ordered to be released on bail on his furnishing adequate bail and surety bonds to the satisfaction of learned trial Court.

It is made clear that the petitioner shall offer the amount of Rs.16.5 lakh to the prosecutrix on the next date of hearing before the trial Court.

However, it is made clear that in case the petitioner influences the prosecution witnesses in any manner directly or indirectly, the prosecution shall be at liberty to seek cancellation of his bail.

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 without being influenced with these observations in any manner.

September 19, 2019
Yag Dutt

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned:	Yes
Whether Reportable:	No