

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

**CRM-38008-2019 in/&
Criminal Misc. No.M-40354 of 2019 (O&M)
Date of Decision: 05.12.2019**

Vivek Tyagi

...Petitioner (s)

Versus

State of Haryana

...Respondent(s)

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

Present:- Mr. Lekh Raj Sharma, Advocate and
Mr. Sushil Bhardwaj, Advocate
for the petitioner.

Ms. Gaganpreet Kaur, AAG, Haryana.

Mr. Vinay Kumar Gupta, Advocate
for the complainant.

HARI PAL VERMA, J.

CRM-38008-2019:

Prayer in this application filed on behalf of the complainant is for vacation of stay order dated 20.09.2019 whereby the petitioner was granted interim bail.

Vide order dated 20.09.2019, the petitioner was granted interim bail and subsequently, vide order dated 19.11.2019, the matter was referred to the Mediation and Conciliation Centre of this Court.

As per the application filed on behalf of the complainant, the petitioner has resiled from his statement to marry the complainant and his marriage is already fixed for 07.12.2019.

On oral request of learned counsel for the parties, the hearing of main case, which was otherwise fixed for 13.12.2019, is hereby preponed for today and the same is taken on Board.

Thus, CRM-38008-2019 is disposed of.

Criminal Misc. No.M-40354 of 2019 (O&M):

Prayer in the present 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.43 dated 16.08.2019 under Sections 376, 506, 34 IPC registered at Police Station Sector 32, 33 Karnal.

The aforesaid FIR was registered at the behest of the prosecutrix against the petitioner.

As per the FIR, the prosecutrix and the petitioner were known to each other for the last 5-6 years, since their college time. Earlier also, the complainant had filed a complaint against the petitioner on 04.06.2018, wherein the petitioner in the presence of his family members had admitted that he had developed physical relations with the prosecutrix forcibly and he promised to marry her. On 02.10.2018, he called the prosecutrix and had sex with her against her consent. On that day, he told the prosecutrix that he wanted to introduce her with his family and maternal grandmother regarding preparation of the marriage. Therefore, he called her in Atal Park, where he tied her hands forcibly and committed rape in his car. However, when she resisted, he started beating her and tightened her hands

and feet and applied force. Thereafter, he started threatening and abusing her and also started demanding money while showing his needs. He continued to promise her to marry and when talks of marriage started, he threatened to kill her and her parents. His family members including parents, brother and maternal uncle Yoginder Tyagi are also involved in all this. The complainant and her family members apprehend danger to their life and liberty at the hands of the petitioner and his entire family members. Precisely, the allegation against the petitioner is that he has established physical relations with the prosecutrix with a promise to marry her.

On 20.09.2019, when this case was listed for hearing, following order was passed:-

“Counsel for the petitioner states that on 02.10.2018, no such incident, as alleged in the FIR, had taken place. He refers to WhatsApp chats in support of this contention (Annexure P-2). He further states that the petitioner is ready to settle the dispute.

Notice of motion.

On oral request of counsel for the petitioner, complainant-Sahiba Nagpal is ordered to be impleaded as respondent No.2. Petitioner shall file an amended memo of parties with the registry within a week from today.

List on 05.11.2019.

Meanwhile, till the next date of hearing, arrest of the petitioner shall remain stayed.

On the adjourned date, the parties i.e. the petitioner and the complainant shall remain present in the Court. However, the petitioner shall pay a sum of Rs.25,000/- to respondent-complainant on her causing appearance before this Court.”

Pursuant to that, the matter was referred to the Mediation and Conciliation Centre of this Court. However, the matter could not be resolved.

Mr. Lekh Raj Sharma, Advocate, counsel for the petitioner, has argued that the petitioner has been falsely implicated in the present FIR registered at the behest of the prosecutrix. The petitioner and the prosecutrix are known to each other for the last 5-6 years from their college time and in this manner, they developed intimacy with each other. In order to put pressure upon the petitioner, the complainant filed a complaint on 04.06.2018 at Women Police Station, Karnal, where the petitioner denied the allegations levelled by the complainant. When the parties were called to the police station and they appeared face to face, the complainant informed the police that she wanted to marry with the petitioner, but the petitioner did not show any interest to marry her. In the month of June, 2019, the prosecutrix again moved a false complaint at Women Police Station, Karnal with the allegations that the petitioner has developed physical relations with her with the promise to marry her, on which, the petitioner was again called at the police station. But the petitioner had denied any physical relations between them and told that Sahiba has one-sided love towards the petitioner. The allegation of the complainant that she was called by the petitioner on 02.10.2018 and committed rape upon her, is totally false. He had never called her on 02.10.2018. Exchange of messages on 02.10.2018 is sufficient enough to establish this fact that the parties never met on 02.10.2018 and therefore, question of commission of rape does not arise.

Learned counsel for the petitioner has further argued that the petitioner and the complainant are major and well educated and therefore, it is not expected that there would be any false promise by the petitioner to the complainant. The FIR was registered on 16.08.2019, but before that, on 11.06.2018, there was a compromise that they will solemnize their marriage within three months. However, despite the parents of the petitioner having approached the parents of the complainant on 20.01.2019 to work out the possibility of marriage between the petitioner and the complainant, they did not come forward. There was no specific reply from them. Physical relations were never established with the complainant on the pretext of marriage.

It has further been argued that as the complainant time and again trespassed into the house of the petitioner, the petitioner was constrained to file a suit for permanent injunction against her and her father, restraining them from entering the house of the petitioner with the help of Station House Officer, Women Police Station, Karnal or any other person. CRM-35935-2019 has been filed by the complainant so as to place on record the statement of the petitioner before the Women Cell on 10.06.2018 as Annexure C-1 and a copy of the Civil Suit as Annexure C-2.

On the other hand, learned counsel for the complainant has argued that the petitioner established physical relations with the complainant on the pretext of marriage and continued with such relations with her for about five years. On 20.09.2019, the petitioner was granted interim bail by this Court and the matter was referred to the Mediation and Conciliation Centre of this Court. Thereafter, on 29.11.2019, the parties

appeared before the Mediation and Conciliation Centre, where the petitioner made a statement that he will marry the complainant and the matter was fixed for 02.12.2019. However, on 02.12.2019, the petitioner resiled from his statement and made an oral statement that he will not marry the complainant, as his marriage is already fixed with someone else for 07.12.2019 and therefore, the interim bail so granted, needs to be vacated.

I have heard learned counsel for the parties.

The allegations levelled against the petitioner in the FIR are that the petitioner established physical relations with the complainant on the pretext of performing marriage with her. This fact finds support from the civil suit for permanent injunction filed by the petitioner, wherein the petitioner has admitted that the petitioner and the complainant were classmates during the years 2009 to 2013 and the petitioner was residing in his maternal uncles house at Shakti Puram, Karnal, where intimacy developed between them and thereafter, the complainant contacted the petitioner many a times telephonically. In the year 2017-18, the petitioner remained busy in his job and during that period, the complainant told him that she wants to meet him. She also proposed that she wants to marry with him, but the petitioner had shown his inability to go for this marriage, as they belong to different castes. There are clear allegations against the petitioner that he established physical relations with the prosecutrix on the pretext of performing marriage with her and this relationship continued. There was talk of marriage between the parties, as is clear from the civil suit filed by the petitioner and the FIR.

In the case of **Dr. Dhruvaram Murlidhar Sonar Vs. State of Maharashtra** (2019) SCC Online 3100, Hon'ble the Apex Court has observed that there is a clear distinction between rape and consensual sex. The Court, in such cases, must very carefully examine whether the complainant had 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, as the later falls within the ambit of cheating or deception. The relevant observations in the case read as under:-

“23. Thus, there is a clear distinction between rape and consensual sex. The court, in such cases, must very carefully examine whether the complainant had 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, as the later falls within the ambit of cheating or deception. 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 sexual acts, such an act would not amount to rape. There may be a case where the prosecutrix agrees to have sexual intercourse on account of her love and passion for the accused and not solely on account of the misconception created by accused, or where an accused, on account of circumstances which he could not have foreseen or which were beyond his control, was unable to marry her despite having every intention to do. Such cases must be treated differently. If the complainant had any mala fide intention and if he had clandestine motives, it is a clear case of rape. The acknowledged consensual physical relationship between the parties would not constitute an offence under Section 376 of the IPC.”

In the case of **Anurag Soni Vs. State of Chhatisgarh** **Criminal Appeal No.629 of 2019 arising out of SLP (Crl.) 618 of 2019,** Hon'ble the Apex Court, while upholding the conviction of the appellant therein under Section 376 IPC, has observed that the consent given by the prosecutrix on false promise of the accused that he will marry her, can be said to be a consent on misconception of fact as per Section 90 IPC and

such a consent shall not excuse the accused from the charge of rape and offence under Section 375 IPC. It was also observed that “*Such offences are against the society. Rape is the most morally and physically reprehensible crime in a society, an assault on the body, mind and privacy of the victim. As observed by this Court in a catena of decisions, while a murderer destroys the physical frame of the victim, a rapist degrades and defiles the soul of a helpless female. Rape reduces a woman to an animal, as it shakes the very core of her life.*”

Since the allegations against the petitioner is that he has established physical relations with the complainant on the pretext of marriage and prayer in the case is for anticipatory bail, he is not entitled for this relief.

Accordingly, the present petition is dismissed.

However, it is made clear that the observations made hereinabove shall not be construed as an expression on the merits of the case and during trial, no weightage shall be given to the observations made in this order.

December 05, 2019
AK

(HARI PAL VERMA)
JUDGE

Whether speaking / reasoned?

Yes / No

Whether reportable?

Yes / No