

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

CRM-M-175 of 2020.

Decided on:- January 13, 2020.

Akshay Raina.

.....Petitioner.

Versus

State of Haryana.

.....Respondent.

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

Present:- Mr. Jagmohan Ghumman, Advocate
for the petitioner.

Ms. Priyanka Sadar, AAG, Haryana.

HARI PAL VERMA, J. (Oral)

The petitioner has filed present petition under Section 439 Cr.P.C. for grant of regular bail in FIR No.92 dated 02.08.2019 under Section 376(2)(n) IPC registered at Police Station Gurugram, District Gurugram.

The aforesaid FIR was registered at the behest of the prosecutrix. As per the FIR, the petitioner had met the prosecutrix and their relations were developed. The petitioner had projected that he is filing a divorce case and on the pretext of false promise of marriage, he continued to establish physical relations with the prosecutrix (since deceased) for the last about 2 years. He used to spend vacations with her in Mussoorie, Manali and Kasol. He also used to invite her every week in his house DLF, Phase-III, Block-S, H.No.31A/27-28 and used to have relations with her after giving false

promise of marriage. He also went to Kumbh Mela with the family of the prosecutrix. However, on 05.07.2019, he blocked the prosecutrix from everywhere and stopped giving any answer of her calls and messages. He even blocked the numbers of the prosecutrix and her family. For this reason, the prosecutrix remained under depression and consumed some medicine for which she remained admitted in hospital for about three days. Thereafter, she had committed suicide on 09.08.2019 by hanging.

Learned counsel for the petitioner has argued that at the most, the relations between the petitioner and the prosecutrix (since deceased) were consensual as both of them were already married. Even if the petitioner had established relations on the pretext of solemnising marriage with the prosecutrix, the prosecutrix also could not have solemnised marriage with the petitioner without having divorce from her husband, as she was already married. The fact that the prosecutrix had accompanied the petitioner to different places and her family having accompanied the petitioner to Kumbh Mela further establishes that there were family relations and they were having intimated relationship. There is no medical evidence against the petitioner so as to establish the very factum of rape having been committed upon the deceased.

He further states that the prosecutrix in this case had committed suicide by hanging on 09.08.2019 and for the offence of abetment to commit suicide, a separate FIR No.881 dated 09.08.2019 under Section 306 IPC at Police Station Sadar Gurugram has already been registered against the petitioner, wherein he has been admitted on regular bail by learned Additional Sessions Judge, Gurugram. The petitioner is in custody since 10.08.2019 and

the conclusion of trial is likely to take long time as no prosecution witness has been examined in the case so far, though the prosecution has cited total 15 witnesses.

Learned State counsel, on instructions from ASI Dinesh Kumar, does not dispute the custody and the fact that the prosecutrix had committed suicide on 09.08.2019. She further states that the petitioner despite married had established relations with the prosecutrix (since deceased) on the pretext of marriage. In this manner, he established relationship with the prosecutrix in total misconception which cannot be treated as consent. The petitioner had given an impression to the deceased that he has filed a divorce petition and is likely to get a decree of divorce, but no such divorce was granted in his favour.

I have heard learned counsel for the parties.

The petitioner is in custody since 10.08.2019. After registration of the present FIR on 02.08.2019, the prosecutrix in the case had committed suicide by hanging for which a separate FIR No.881 dated 09.08.2019 under Section 306 IPC was registered at Police Station Sadar Gurugram, wherein the petitioner has been admitted on regular bail by learned Additional Sessions Judge, Gurugram. The allegation against the petitioner is that he had established physical relations with the prosecutrix on the pretext of marriage and had given an impression that he will solemnise marriage with her, but the petitioner as well as the prosecutrix, both were already married. So long as a decree of divorce has been granted in favour of the parties, they could not have solemnised marriage. In this manner, the culpability of the petitioner is yet to be established during the trial, which is not likely to be concluded in

near future, as no witness has been examined in the case so far, though the prosecution has cited 15 witnesses in the case. Therefore, this Court finds that no useful purpose would be served by keeping the petitioner in further custody, when he has already been admitted on bail for offence under Section 306 IPC in FIR No.881 dated 09.08.2019.

Accordingly, 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.

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.

January 13, 2020
Yag Dutt

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: No