

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

**CRM-M-23858 of 2020
Date of Decision: 22.12.2020**

Rajan Sharma

..... Petitioner

Versus

State of U.T. Chandigarh

..... Respondent

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Dr. Anmol Rattan Sidhu, Sr. Advocate, with
Ms. Mandeep Kaur, Advocate,
for the petitioner.

Mr. A.M. Punchhi, Public Prosecutor, U.T. Chandigarh.

Mr. Neeraj Januja, Advocate,
for the complainant.

AMOL RATTAN SINGH, J.

By this petition, the petitioner seeks to be admitted to anticipatory bail, upon FIR no.224, dated 16.07.2020, having been registered at Police Station Sector 39, Chandigarh, alleging therein the commission of an offence punishable under Section 376 (2) of the Indian Penal Code.

The petitioner is stated to be working as a Junior Draftsman in a department of the Chandigarh Administration, with the complaint having been filed by the prosecutrix stating to the effect that she is a widowed lady whose husband died in the year 2012, with her having a son from the said marriage, and that she is residing separately on the first floor of her in-laws'/husbands' house,

alongwith her son (with her having been married to her late husband in November 2005).

In the year 2018, she is stated to have put a request on the website Jivansathi.com, seeking to re-marry and on 20-21 May, 2018 she is stated to have received a request from the petitioner, with whom she spoke on the telephone, with him alleged to have told her that his case for a divorce from his wife was ongoing and that he would solemnise the marriage with her after his divorce.

He is also stated to have told her that he was in fact working as a Junior Engineer in Chandigarh, and accordingly she, placing trust in him, started meeting him, with him also visiting her home.

As per the complaint, in the month of June 2018, the petitioner took her to a hotel in Chandigarh (the name of which she did not remember), where he allegedly made physical relations with her by stating that he was going to marry her.

It is further recorded in the FIR that she contended that they used to meet in different hotels of Chandigarh on every Sunday, with him also visiting her house and that he continued to make physical relations with her on the pretext of marriage, but when she actually asked him to marry her, he used to delay the matter by saying that his wife was demanding Rs.20,00,000/- from him and that after settling that amount, he would obtain a divorce from her and marry the complainant.

Still further, she alleged that the petitioner also took Rs.70,000/- to 80,000/- from her from time to time, in the shape of gifts and on the pretext of paying his lawyer in the divorce case.

Thereafter in the month of January 2020, he is stated to have started ignoring her saying that he was under pressure to maintain his marriage, but even

so he came on 18.03.2020 to the complainants' house and stayed with her for 2-2:30 hours and allegedly also made physical relations on that day.

After that, when the complainant insisted that he get married to her, he stated that he had been transferred to Delhi and that if she pressurized him any further, he would get her son kidnapped (as alleged) and that in any case she could get married to anyone else, with him completely refusing to marry her at that stage.

2. In the present petition, the petitioner (accused) contends that he was on the verge of a breakdown by reason of him being in a strained relationship with his wife, with him also having filed a divorce petition which was withdrawn by him due to family pressure. (A copy of the order of the court where his statement withdrawing the petition has been recorded, has been annexed with the petition as Annexure P-2, with the said order seen to be dated 11.07.2016).

It is further stated in the petition that the petitioner lost his father in October 2017, and that he had also been facing various health problems including depression for which he was undergoing treatment, and that to get his pathology tests done he had also visited a laboratory in Chandigarh, where he met the complainant for the first time, upon which they became friends; with her having allegedly promised him to get a good discount for his tests, he being a Government employee.

Thereafter, with the complainant having changed her job to a different diagnostic centre, he is stated to have been getting his tests done from there (with the copies of the test reports conducted from two diagnostic centres having been annexed with the petition as Annexures P-4 to P-6).

3. Further, as per the petition, the complainant was fully aware of the disturbed matrimonial life of the petitioner and she started compelling him to take a divorce from his wife, further stating that she was willing to pay for the alimony

that he would pay his wife, with the petitioner also having alleged in the petition that he is in possession of call records wherein the complainant had made such assertions.

It is next contended in the petition that when the petitioner came to know “about the intentions of the complainant” he immediately stopped talking to her, after which she got furious and started emotionally tormenting him, also stating that she would settle down by marrying by some other man.

However, when he still did not (allegedly) succumb to her pressure, she started threatening him that she would involve him in a false rape case, with a conversation allegedly stating to that effect also having been annexed as Annexure P-7 with the petition. (However, from that transcript no such threat seems discernible).

It has next been stated that despite the complaint that led to the lodging of the FIR, having been made actually on 13.06.2020, on that very day and in the days immediately prior thereto, the complainant had been in normal conversation with the petitioner and that she gave no indication that she would file a complaint.

4. The petition further goes on to state that even while sitting in the police station, the complainant allegedly abused and threatened the petitioner, with the petitioner told to speak to a lady police officer and with him allegedly having told that officer that in fact there had never been a physical relationship between him and the complainant.

5. Importantly, it is next stated in the petition that the matter was thoroughly investigated by a lady Sub-Inspector, who, after examining the entire issue, came to the conclusion that the petitioner was innocent.

However, allegedly due to the influence of the complainant, the said report by the police official was not taken into consideration by the SSP who thereafter directed registration of the FIR.

As per the petitioner, in the said report the Sub-Inspector had also stated that the complainant had on previous occasions also entrapped other persons in such like matters and thereafter compromised, with one such complaint having resulted in FIR no.308, dated 15.09.2014, registered at Police Station Industrial Area, Chandigarh, alleging therein the commission of offences punishable under Sections 354-A/354-B and 509 of the IPC. (A copy of that FIR has also been appended with the present petition).

6. Last, it has been stated in the petition that even if the allegations of the complainant are to be believed (though not admitted), it would be obvious that she was involved with the petitioner knowing that he was a married man and that she had willfully consented to a physical relationship and consequently, at best, the matter would come within the purview of Section 497 of the Cr. P.C., which provision already stands quashed by the Supreme Court (as has been stated in the petition).

Hence, while citing a judgment of the High Court of Himachal Pradesh, the prayer in the petition is to admit the petitioner to anticipatory bail.

7. The petition having initially come up for hearing on 21.08.2020, while issuing notice of motion, this court (co-ordinate Bench) had directed that the preliminary inquiry report be filed by the prosecution and though on the next date, i.e. September 07, 2020, it has not been recorded in the order that any such report was filed, however, the presence of the learned Public Prosecutor (who had been asked to file a preliminary inquiry report), is shown to have been marked (and it was filed).

On that date itself, noticing the contentions of learned senior counsel appearing for the petitioner to the effect that the petitioner had filed a contested divorce petition but had withdrawn the same hoping that he would be able to convince his wife to a divorce by mutual consent, and that the prosecutrix was very well aware of the petitioners' marital status to the effect that he was awaiting a divorce, he was ordered to be admitted to interim bail upon him joining investigation, if he was sought to be arrested.

8. On the next date of hearing, the learned Public Prosecutor had vehemently argued that with the petitioner actually having withdrawn his petition seeking a divorce under the provisions of Section 13 of the Hindu Marriage Act, 1955, in July 2016, and thereafter having put up his profile on the portal “shadi.com” stating that his divorce was awaited, he wholly mis-represented to the public at large and therefore to the complainant in particular, who accepted his status of awaiting a divorce, and consequently, he actually does not deserve to be admitted to bail.

9. Arguments having been addressed at length thereafter, Dr. Sidhu, learned senior counsel appearing for the petitioner submitted that both, the petitioner and the prosecutrix, being above 40 years of age and both having children of their own, it is very obvious that neither of them was misled by the other and if at all any physical relationship took place between them (though denied), it was obviously wholly consensual .

Learned senior counsel next submitted that the petitioner in fact having been exonerated by the police in its report dated June 23, 2020, it was only on the opinion of the District Attorney that the FIR was eventually registered, with the District Attorney having cited the case of State of U.P. v. Naushad (2013) 16

SCC 651 wholly out of context.

He next relied upon another judgment of the Supreme Court in **Parmod Suryabhan Panwar v. State of Maharashtra** (Criminal Appeal no.1165 of 2019, decided on 21.08.2019), (which also in fact is a judgment cited by Mr. Ashu Mohan Punchhi, learned Public Prosecutor, alongwith **Anurag Soni v. State of Chhattisgarh** (2019) 13 SCC 1 and **Maheshwar Tigga v. State of Jharkhand** (Criminal Appeal no.635 of 2020, decided on September 28, 2020).

In fact, learned senior counsel referred to that very judgment to submit that in the circumstances, in fact the petitioner cannot be held guilty of rape in any case.

From Anurag Sonis' case, Dr. Sidhu referred to paragraphs 10.6 and 11 in that context.

10. Mr. Sidhu then referred to what is stated to be a copy of the printout taken of a "Whatsapp chat" between the petitioner and the complainant on May 08, 2020 (copy Annexure P-7), to submit that in some parts thereof she was expressing her love for the petitioner and then started quarreling with him.

Learned senior counsel next submitted that the previous FIR lodged by the petitioner against her senior who was allegedly harassing her in a previous work place, was lodged within one month of the occurrence, but she took two years to file the present FIR, after a long relationship.

He next submitted that even after the lodging of the complaint on June 13, 2020, she continued to chat with the petitioner upto 15.06.2020, as is even admitted by the investigating agency.

Learned senior counsel last submitted that in any case no recovery was required to be effected from the petitioner who has continuously joined investigation as and when called for, with there also being an inquiry report in his favour, and therefore there would be no reason to deny him the concession of

anticipatory bail, especially as no offence punishable under Section 376 of the IPC is made out, with, at best, only an offence punishable under Section 417 thereof being attracted (if at all).

In that context, he referred to a judgment of the Supreme Court in **Tilakraj v. State of Himachal Pradesh (2016) 4 SCC 140.**

11. Vehemently opposing the grant of anticipatory bail to the petitioner, Mr. Ashu Mohan Punchhi, learned Public Prosecutor, Chandigarh Union Territory, submitted that the first indication that the petitioner made a false promise of marriage to the complainant, is obvious from the fact that despite having withdrawn his petition under Section 13 of the Hindu Marriage Act in July 2016 itself, in 2018 he posted his status on “shadi.com” as a person “awaiting divorce”.

Mr. Punchhi submitted that therefore, as per settled law even in terms of *Anurag Sonis'*, *Parmod Suryabhan Panwars'* and *Maheshwar Tiggas'* cases (all supra), with the petitioner never having intended to marry the complainant and thereafter having lured her into a physical relationship, an offence punishable under Section 376 of the IPC is very much made out, read with Section 90 thereof.

12. Mr. Punchhi further submitted that the petitioner has always been living with his wife and two children, who are 12 years old and 8 years old, even during his relationship with the complainant, and consequently, he obviously never had any intention of marrying her, with him only having misled a woman seeking re-marriage.

Learned Public Prosecutor next submitted that it is not as if the complainant is a woman of 'loose character' but is a lady duly keeping herself gainfully employed as a Laboratory Technician/Assistant, who simply wished to re-marry upon the death of her husband, and therefore anybody taking advantage of her emotional state, cannot be said to be free from guilt.

13. Mr. Punchhi next submitted that in fact the petitioner wholly lied to the complainant, simply to end their relationship, that he had been transferred to Delhi, whereas no such transfer had taken place.

Hence, in view of all the facts, learned Public Prosecutor submitted that the petitioner having deliberately misled the complainant into a physical relationship which he had no intention of honouring by way of a marriage with her, he does not deserve to be admitted to anticipatory bail.

14. Mr. Neeraj Januha, learned counsel appearing for the complainant, simply reiterated what the learned Public Prosecutor had already argued.

15. Having considered the matter, as also the judgments cited by learned counsel on both sides, the gist of what emerges therefrom is that if the consent of a woman, in terms of Section 90 of the IPC, is obtained by wholly falsely putting her in a mis-conception of fact to obtain such consent for physical relations, then obviously such consent cannot be said to be willingly given and would in fact amount to no consent.

In other words, in the context of the present case, if at the outset the petitioner never had any intention at all of marrying the complainant but obtained her consent into any physical relationship on the promise of marrying her, then, at least *prima facie*, a case of rape would be made out against him. However, if he did have the intention of marrying her, but subsequently changed his mind, that may not amount to the commission of the said offence.

16. The contention of Mr. Punchhi, learned Public Prosecutor, that with the petitioner having already withdrawn his divorce petition in the year 2016, but having thereafter in the year 2018 displayed his status on the website “shadi.com”, as “awaiting divorce”, it would mean that he never ever intended to marry any person and was simply showing that status to get into a relationship with

somebody whom he knew he would never marry.

Hence, the complainant having fallen for that ruse, and having consented to a physical relationship (as contended by her), the petitioner, as per Mr. Punchhi, would be guilty of rape and therefore does not deserve to be admitted to anticipatory bail.

17. *Per contra*, Dr. Sidhu, learned senior counsel for the petitioner firstly had submitted that the petitioner was in fact wanting to obtain a divorce from his wife by way of mutual consent after having withdrawn the contested petition, and in any case he having strained relations with her, consequently he had not put up a false status on “shadi.com”, and therefore cannot be stated to have held out a false promise.

In this context, he also pointed to the report of the inquiry conducted by the investigating agency itself, a copy of which has been placed on record by learned Public Prosecutor, in which eventually it had been concluded that there was no evidence regarding the complainant being raped by the petitioner on the pretext of marriage.

While coming to that conclusion, it has been stated by the Lady Sub-Inspector who inquired into the matter, that if at all any physical relations took place between the two (against her will), she being a well educated lady who had earlier lodged an FIR alleging harassment at the hands of her superiors at work, very well knew the procedure of lodging the complaint with the police, with the said complaint having been made within 2-3 months of that occurrence.

It has further been stated that as per the “Whatsapp chat” between the petitioner and the complainant, nothing could be made out that he had either threatened her child or that in fact he had ever been the one who initiated any expression of love etc. for her, with her being the person in fact who did so.

She having continuously spoken to him even after lodging the complaint, has also been stated in the inquiry report made by the lady Sub-Inspector (on June 23, 2020 to the competent authority).

18. On the other hand, the learned Deputy District Attorney who has given the opinion for registration of the FIR, has referred to the judgment of the Supreme Court in **State of U.P. v. Naushad** (*supra*).

That was a case in which undoubtedly it was held by the Supreme Court that the accused had falsely promised marriage to the prosecutrix, who was 19 years old, and thereby obtained her consent for sexual relations, and therefore he was guilty of in fact the commission of rape, her consent having been obtained by mis-leading her and therefore putting her in a misconception of fact, in terms of Section 90 of the IPC.

19. It is to be noticed that all the judgments cited by learned counsel on both sides are in the context of appeals before the Supreme Court, either against conviction, or in the context of a petition filed under Section 482 of the Cr.P.C. before a High Court, seeking quashing of an FIR with similar allegations made therein.

Thus, in the present case what is to be considered at this stage, in a petition seeking anticipatory bail under the provisions of Section 438 of the Cr.P.C., is (obviously), whether or not in the circumstances of the case, the interim order passed in favour of the petitioner should be made absolute.

20. Having considered that, it is of course first to be observed that it is not even denied that the petitioner has shown his status on the website “shadi.com” as a person “awaiting divorce”, whereas actually he had already withdrawn his divorce petition in the year 2016, i.e. two years prior to that.

However, firstly looking at the fact that the complainant though has stated that the petitioner first made physical relations with her in a hotel in Sector-22, Chandigarh but she did not remember the name of that hotel, and further, in the inquiry report in fact it has been recorded that the petitioner denied any physical relations and as per the report no messages from him were found, or no conversation between him and the complainant was found, to show that he had been 'enticed' her, therefore for the purpose of this petition, I would see no reason to vacate the interim order passed in favour of the petitioner by a co-ordinate Bench.

Naturally, the investigation in the matter would continue and thereafter a conclusion reached by the investigating agency as to whether any physical relations were established by the petitioner with the complainant, at least as per evidence gathered, and whether he actually had any intention of not marrying her, despite withdrawing his divorce petition but still posting his status on the aforesaid website as a person awaiting divorce.

21. However, it has also to be noticed here that in the opinion given by the Deputy District Attorney, it has been stated that in his initial statement before the police, though the petitioner admitted to having posted the aforesaid status, he also stated that he was in a happy married relationship.

On the other hand, learned senior counsel has argued before this court that in fact his marriage was very strained and that he was trying to get his wife to agree to a divorce by mutual consent under the provisions of Section 13-B of the Act of 1955.

Hence, obviously all those aspects would need to be gone into while investigating the FIR already registered.

22. As regards the petitioner being admitted to anticipatory bail, seeing all the aforesaid circumstances as have been brought before this court, I see no reason to vacate the interim order passed in favour of the petitioner and consequently, without making any comment on the actual merits of the case at this stage, this petition is allowed, with the order dated September 07, 2020, admitting the petitioner to interim bail in case he is sought to be arrested, made absolute on the same terms and conditions.

December 22, 2020
dinesh/

(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	No