

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

201

CRM-M-25844-2020

Date of Decision: 09.10.2020

VISHAL VERMA

....Petitioner

Versus

STATE OF HARYANA

....Respondent

CORAM: HON'BLE MR. JUSTICE LALIT BATRA

Present: Mr. G. C. Shahpuri, Advocate
for the petitioner.

Ms. Dimple Jain, AAG, Haryana.

Mr. Rakesh Bakshi, Advocate
for the complainant.

Lalit Batra, J.(Oral)

Case has been taken up for hearing through Video Conferencing.

Present petition under Section 438 Cr.P.C is for grant of pre-arrest bail to the petitioner in case F.I.R. No.57 dated 29.06.2020 under Sections 323, 376 and 506 IPC read with Section 34 IPC registered at Police Station Women, District Yamuna Nagar.

Reply filed by respondent-State, is taken on the record.

Learned counsel for the petitioner *inter alia* contends that the allegations levelled in the FIR are totally concocted, false and frivolous and there is no iota of truth therein. He further urges that as a matter of

fact monetary dispute between the parties has been given colour of offence. He further urges that in terms of allegations as set up in the complaint, petitioner was known to prosecutrix since October, 2018 and since then prosecutrix is having alleged relationship with the petitioner and further as per allegations, in June, 2019, petitioner had proposed her to marry, whereas registration of present FIR on 29.06.2020 after inordinate delay smacks of foul play at the instance of prosecutrix. He further submits that later on prosecutrix had started blackmailing the petitioner and raised demand of ₹30 lakhs and also pressurised him to marry her. He further urges that even otherwise consensual physical relationship on the false promise of marriage is no offence and to this effect he refers to the judgment rendered by Hon'ble Supreme Court in case **Pramod Suryabhan Pawar vs. The State of Maharashtra and another, 2019 (4) RCR (Criminal) 135**. He further urges that though petitioner has no nexus whatsoever with the alleged offence, even then he is ready to join investigation as and when required by the Investigating Agency and he may be released on pre-arrest bail.

On the other hand, learned State counsel assisted by learned counsel for the complainant while opposing the cause of petitioner has vehemently argued that the present case is not a case of mere breach of promise to marry. She further urges that in the present case, from the very beginning and from the inception, the intention of the petitioner was not to marry with the prosecutrix and he was to marry another lady

Gunjan Verma. She further urges that despite the above and by giving promise that petitioner would marry, he had a sexual intercourse with the prosecutrix. She further urges that in fact the prosecutrix initially objected to have any sexual intercourse, however, as the petitioner gave assurance and promise that he would marry, the prosecutrix gave consent. She further urges that as the consent was obtained by the petitioner on misconception of fact and, therefore, the same cannot be said to be a consent even considering Section 90 of the IPC. She further urges that even the conduct on the part of petitioner which is born out from the record that when the parents of petitioner and the prosecutrix subsequently met to arrange their marriage, instead of honouring said relation, petitioner and his family members took somersault and even insulted the parents of petitioner. She further urges that prosecutrix was medico-legally examined, vide MLR (Annexure R-1), wherein it has been opined that “possibility of sexual assault cannot be ruled out”. She further contends that in her statement (Annexure R-2) recorded under Section 164 Cr.P.C., the prosecutrix has corroborated the allegations levelled by her in the complaint, on the basis of which FIR was registered. Learned State counsel while relying upon case **Anurag Soni vs. State of Chattisgarh, 2019(2) RCR (Criminal) 852 (Supreme Court)** contends that since consent of prosecutrix was on misconception of fact, petitioner has committed grave offence of rape. She further contends that custodial interrogation of petitioner is necessitated to

unearth the genesis of offence and further mobile phone whereby petitioner used to talk with the complainant is yet to be recovered and as such in view of gravity of offence, petitioner does not deserve the concession of pre-arrest bail.

I have heard learned counsel for the parties and have carefully gone through the contents of petition as well as reply furnished at the instance of respondent-State.

Without commenting anything on the merits of the case, lest it may prejudice the case of either of the parties, allegedly petitioner from the very beginning never intended to marry the prosecutrix; he gave false promises to the prosecutrix to marry her and on such false promise he had a physical relation with the prosecutrix and as such consent of prosecutrix obtained on misconception of fact, these allegations attract the charge of rape and offence under Section 375 IPC, in this scenario, in case concession of pre-arrest bail is extended to the petitioner, it would lead to lawlessness in the society. Pre-arrest bail to an accused should be granted in exceptional circumstances as a person couched in comparative safety to the pre-arrest bail would certainly not disclose all the facts within his knowledge. In a given situation, custodial interrogation of petitioner is certainly required for complete and effective investigation. In case, same is denied to the Investigating Agency that shall leave many glaring loopholes and gaps, adversely affecting investigation, which is uncalled for. Keeping in view totality of entire scenario and nature of

offence, no extra-ordinary ground has been made out in favour of petitioner for his entitlement of pre-arrest bail.

As a sequel to above, instant petition for grant of pre-arrest bail moved by the petitioner is dismissed.

(LALIT BATRA)
JUDGE

09.10.2020
rimpal

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No