

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

**CRM-M No.38380 of 2020 (O&M)
Decided on: 25.11.2020**

Kanwarbir Singh

....Petitioner

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Mr. D.S. Pheruman, Advocate
for the petitioner.

Mr. Joginder Pal Ratra, DAG, Punjab.

Mr. Mandeep Singh Sachdev, Advocate
for the complainant.

ARVIND SINGH SANGWAN, J.

Prayer in this petition is for grant of anticipatory bail to the petitioner in FIR No.5 dated 14.10.2020 registered under Sections 376/420 of the Indian Penal Code, 1860 (in short 'IPC') at Police Station N.R.I., District Amritsar.

Counsel for the petitioner has submitted that as per the allegations in the FIR, registered at the instance of the complainant 'G' name not disclosed, she has stated that she belongs to Scheduled Caste and in the year 2016, she had gone to Australia for higher studies. Thereafter, the petitioner became a friend of the complainant who offered for marriage. The complainant informed him that she belongs to Scheduled Caste family and therefore, the marriage is not possible as

the petitioner belongs to a Jaat Sikh family, however, the petitioner convinced her that there will be no problem in performing their marriage. Later on, the petitioner started insisting for having physical relation with her on the pretext of performing marriage. Initially, the complainant refused but after many attempts, the petitioner by giving some intoxicant in food, violated her. In this process, the petitioner has taken some objectionable photographs of the victim without her knowledge, which was disclosed to her later on. Since the complainant was residing abroad, the petitioner informed her that he has convinced his parents for marriage and the victim came to India on 07.12.2018 and the petitioner took her to a Gurudwara where he had taken an oath that he will marry her and on that pretext, both stayed in a hotel at Amritsar and again, the petitioner committed rape upon her. It is further stated in the FIR that the marriage was not performed and from 11.07.2019 to 16.07.2019, the complainant and the petitioner again stayed in the hotel where the petitioner informed that his father is objecting in the marriage of the complainant with the petitioner as she belongs to a Scheduled Caste category. The petitioner, in that pretext, has committed rape upon the complainant. It is further stated in the FIR that for a considerable long time, on the assurance given by the petitioner that he will perform marriage, she kept on waiting and ultimately as per the details given in the FIR, when the complainant found that the petitioner has committed rape upon her on the pretext of marriage whereas he never intended for the same, she made a complaint to the N.R.I. Wing, S.A.S. Nagar and an enquiry was conducted. During the enquiry, the police as per the chatting between the victim and the petitioner dated 09.02.2020, found

that the petitioner sent his account number, asking the victim to send some amount on credit which he will return but the petitioner did not return the money. Even on previous occasion, he was demanding money from the victim. It is further stated that the victim has informed that she is ready to come to India to get herself medico legally examined.

During the investigation, it has further come that the petitioner before having physical relations with the victim was having knowledge that she belongs to a Scheduled Caste category and knowingly that he is not going to perform marriage, he made a fake promise to marry the complainant and thus, has committed the offence.

Counsel for the petitioner has further submitted that it was a case of love affair between the petitioner and the victim and the petitioner could not perform the marriage with the victim as his father has objected to the same. It is also submitted that it is a case of consensual sex between the parties and the victim was never pressurized by the petitioner.

Certain aspersions have been made about the character of the victim that she is habitual to smoking or habitual of having sex with different persons.

Counsel for the petitioner has also argued that the FIR has been registered after a long lase of 01 year and 03 months without any explanation and the victim of her own free will had stayed with the petitioner in a hotel once in December, 2018 and then, in July, 2019 and therefore, it is not a case of rape.

Counsel for the petitioner has relied upon the judgment

“Dr. Dhruvaram Murlidhar Sonar vs State of Maharashtra and

others”, 2019(1) RCR (Criminal) 675, wherein the Hon'ble Supreme Court has held that consensual sex in a live-in relation followed by breach of promise to marry, is not rape.

A perusal of this judgment would show that the Hon'ble Supreme Court on an appreciation of the allegations in the FIR has observed that the victim in the said case was a widow having two children and the accused informed her that he is planning to seek divorce from his wife and they started having a live-in relationship. The facts of the said case are distinguishable from the present case as in the instant case, it is not the allegation that the complainant was having a live-in relationship rather the allegations are that on the pretext of performing marriage knowingly that she belongs to a Scheduled Caste category, the petitioner knowingly that he will not perform marriage with her as he belong to upper caste and the petitioner, after having sexual relationship, has refused to perform the marriage.

In reply, counsel for the State assisted by counsel for the complainant has, however, opposed the prayer for bail on the basis of the allegations in the FIR.

Counsel for the State as well as counsel for the complainant have relied upon the judgment of the Hon'ble Supreme Court “**Anurag Soni vs State of Chhatisgarh**”, 2019(2) RCR (Criminal) 852, wherein the Hon'ble Supreme Court has held that sexual intercourse after obtaining consent to marry is rape.

While deciding this case, the Hon'ble Supreme Court has referred to the case of **Dr. Dhruvaram Murlidhar Sonar's case (supra)**, relied upon by the petitioner and has finally held that the

consent was given by the prosecutrix on misconception of facts and such incidents are increasing now a days. It is further held that the offence of rape is an offence against the society which is the most morally and physically reprehensible crime in a society as it is an assault on the body, mind and privacy of the victim and the rapist degrades and defiles the sole of a helpless victim. The Hon'ble Supreme Court has also held that but for the false promise by the accused to marry the prosecutrix, she would not have given the consent to have physical relation as it is a clear case of cheating and deception.

After hearing the counsel for the parties and after going through the facts of the case, it is apparent that the petitioner knowingly that the victim belongs to a Scheduled Caste category and the accused belongs to an upper caste category and also knowingly the fact that his father will not grant permission to marry her, a fact which indeed happened committed rape on her. There are specific allegations that the petitioner took the victim in confidence by taking her to a Gurudwara and making her a promise of marriage, she consented for physical relation with him believing that the petitioner being an unmarried person will perform marriage with her. The police, after receiving the complaint, conducted a detailed enquiry and collected the chats between the accused and the victim and found that the accused was even taking money from her and has even taken objectionable photographs/videos of the victim, therefore, considering the serious allegations against the petitioner of committing rape on the victim on the pretext of performing marriage and then, extending threats of making the photographs viral which are in possession of the petitioner,

the custodial interrogation of the petitioner is required.

Accordingly, finding no merit, the present petition is dismissed.

(ARVIND SINGH SANGWAN)
JUDGE

25.11.2020
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Whether speaking/reasoned	Yes/No
Whether reportable:	Yes/No