

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

Criminal Miscellaneous No.M-38469 of 2020

Date of Decision: December 4th, 2020

Sagar Angras

..... PETITIONER(S)

VERSUS

State of Haryana

..... RESPONDENT(S)

. . .

CORAM: HON'BLE MR. JUSTICE SANT PARKASH

. . .

PRESENT: - Mr. Vinod Ghai, Senior Advocate, with Mr. Keshav Partap Singh, Advocate, for the petitioner.

Mr. Parveen Aggarwal, Deputy Advocate General, Haryana.

Mr. R.S. Rai, Senior Advocate, with Mr. Gautam Dutt, Advocate, for the complainant.

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Sant Parkash, J

This petition has been moved by the petitioner under Section 438 Cr.P.C. for grant of anticipatory bail in case FIR No.770 dated 24.10.2020 under Section 376(2)(n), 452, 506 IPC, registered with Police Station, City Jagadhri, District Yamuna Nagar.

The allegations against the present petitioner are that the complainant namely Manpreet was having friendly relations with him for the last four years. On the pretext of marriage, the petitioner had physical relations with her and ultimately, betrayed her by refusing to marry. It is

further alleged that in a clandestine manner, the petitioner got himself engaged with some other female and his marriage was going to be solemnized on 25.10.2020.

Learned counsel for the petitioner has contended that sexual relationship between the petitioner and complainant was consensual. They were in relationship for the last four years and there was no promise regarding the marriage between the parties. The complainant filed the complaint before the police only one day before his marriage just to create hurdle in the smooth marriage of the petitioner. There was hardly any concept of mis-conception, coercion or undue influence forcing the complainant to have sexual relationship with the petitioner.

Further elaborating his arguments, learned counsel for the petitioner has drawn the attention of the Court towards certain photographs and whatsapp chat showing that there was hardly any promise for marriage, rather they, being adult consented to be in relationship with each other. Even at certain times, the complainant herself got booked the room in her name and remained with him. Further pointing out that the complainant even got pregnant and since there was no promise of marriage between the parties, she got it aborted.

In support of his contentions, learned counsel has relied upon **Akash Verma vs. State of Haryana, 2020(3) RCR (CrI.) 231; Deepak Pathania vs. State of Punjab, 2019(4) Law Herald 2926; Rohit Chauhan vs. State NCT of Delhi, 2014 (1) RCR (CrI.) 1030** to say that the complainant is a grown up lady, mature, enough educated and as per her own allegations she has remained in this relationship over a long period of time.

Learned counsel for the State alongwith counsel for the complainant has opposed the prayer made by the petitioner tooth and nail. It is vehemently argued that from the sequence of events, it can reasonably be gathered that there was a promise of marriage, otherwise there was no occasion for the complainant to have sexual relationship. The conduct of the petitioner itself would reveal that he continued to cheat the complainant even after getting himself engaged with some other lady. At the time of arguments, a video clip has also been sent through whatsapp group showing the arrangements made for the solemnization of the marriage of petitioner with some other lady.

Heard.

Admittedly and evidently, there is no denial of the fact that petitioner and complainant were under a relationship for the last more than four years. It can be reasonably gathered from the whatsapp chat, photographs and video clips that they were having very intimate relationship with each other. From these communications, an irresistible and unerring inference can be drawn that there was a promise of marriage, otherwise the complainant would not have got herself clicked photographs or videography, which a lady would never like to spoil her future marriage prospects. If there would have been no promise of marriage, a sane female would not get into such type of photography or the videography.

With regard to the sexual relationship, it can be reasonably gathered from the circumstances that it was on account of assurance and undertaking of marriage. Even in one whatsapp chat, the petitioner has been found to be saying that they will plan to have the child, may be after six months, a year, one & half year or two years of marriage. The cheating and

mischief on the part of the petitioner is well apparent on the face of it as he got himself engaged with some other lady but continued to meet the present complainant. Had the relationship been only consensual or not for the marriage, the parties would have certainly broken off the said relationship but it did not happen. From the chain of events, it cannot be presumed by any stretch of imagination that there was no misconception, undertaking or promise of marriage between the parties.

This Court in **Shitij Gaur vs. State of Haryana, 2016(5) RCR (Criminal) 31**, after considering various pronouncements of different High Courts as well as Supreme Court, has categorically held that in case the consent is given by the victim under the misconception of the fact, it is vitiated. In the present case, petitioner had sexual relationship with the complainant by giving a false assurance of marriage but subsequently backed out from the same. Thus, it is evident that petitioner never intended to marry the complainant but he procured her consent only for having sexual intercourse with her. The act of the petitioner falls squarely under the definition of rape as he had sexual intercourse with the victim by obtaining her consent under a misconception of the fact as defined under Section 90 IPC. The alleged consent said to have been obtained by the petitioner was not voluntary consent and as such the accused indulged in sexual intercourse with the prosecutrix by misconstruing to her his true intentions.

In the present case, the case law cited by the petitioner is not applicable as for grant of anticipatory bail, only the allegations are to be seen. It is clear that the complainant had sexual intercourse with the petitioner on the fake representation made him that he would marry her. This was a false promise held out by the petitioner. Had this promise not been

given perhaps, she would not have permitted the petitioner to have sexual intercourse. Section 90 IPC says that if the consent has been given under fear of injury or misconception of fact, such consent obtained, cannot be construed to be valid consent. This kind of consent obtained by the petitioner cannot be said to be any consent because she was under a misconception of fact that he intends to marry her, therefore, she had submitted to sexual intercourse with him. Thus, it is absolutely crystal clear that the present petitioner has tried to play with the life of the complainant and took undue advantage on the pretext of getting marriage.

In view of the above discussion, no ground for grant of anticipatory bail is made out. The present petition is dismissed.

(Sant Parkash)
Judge

December 4th, 2020
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Whether Speaking/ Reasoned:
Whether Reportable:

Yes/ No
Yes/ No