

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

CRM-M-1836 of 2021 (O&M)
Decided on:- February 24, 2021.

Arun Kumar.

.....Petitioner.

Versus

State of Haryana.

.....Respondent.

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

Present:- Mr. R.S. Rai, Senior Advocate with
Mr. Gautam Dutt, Advocate
for the petitioner.

Ms. Gaganpreet Kaur, A.A.G., Haryana.

Mr. Anshul Mangla, Advocate
for respondent No.2.

HARI PAL VERMA, J.

The matter has been taken up for hearing through video conferencing due to outbreak of COVID-19.

CRM-1522-2021

Prayer in this application filed under Section 482 Cr.PC is for impleading the victim as respondent No.2 and for placing on record the amended Memo of Parties.

For the reasons stated in the application, the same is allowed and the victim is ordered to be impleaded as respondent No.2.

Amended Memo of Parties is taken on record.

CRM-1523-2021

Documents (Annexure R-2/1) are taken on record, subject to all just exceptions.

CRM stands disposed of.

CRM-M-1836-2021

The petitioner has filed this petition under Section 438 Cr.P.C. for grant of anticipatory bail in FIR No.193 dated 08.12.2020 under Section 376(2)(n) IPC registered at Police Station Sadhaura, District Yamuna Nagar.

The aforesaid FIR was registered at the behest of prosecutrix 'A', wherein she has complained that in the year 2014, she used to take coaching in Yamuna Nagar and she came in contact with the present petitioner, who used to visit her house also. In the year 2015, the petitioner got a job in a bank. He used to help her in her exams and used to take her to the examination centres also. On 07.07.2018, he committed bad act upon her at her house against her wishes on the false pretext of marriage. Thereafter, he continued to repeat the act. However, when the mother of prosecutrix and her relatives visited the house of the accused (petitioner herein) so as to talk regarding the marriage prospects, the family of petitioner denied the proposal. Now, he has refused to perform marriage with her. The petitioner lastly committed episode of rape upon her on 14.11.2020. Hence, the present F.I.R.

Initially, vide order dated 14.01.2021, notice of motion was issued in this case for 21.01.2021. On 21.01.2021, the case was adjourned to 09.02.2021. On that date, learned counsel for the petitioner sought time to have instructions in the case and the case was adjourned to 22.02.2021.

However, on 22.02.2021, learned senior counsel for the petitioner had

submitted that he would like to argue the matter on merits. In this manner, the matter is heard on merits.

Learned senior counsel for the petitioner has argued that the petitioner has falsely been implicated in the case and the prosecutrix has cooked up a totally false story despite the fact that the petitioner is innocent. The prosecutrix is a mature lady of 28 years of age. She joined a coaching in Yamuna Nagar in the year 2014 and came in contact of the petitioner. There is an inordinate delay in getting the present FIR registered. As per the allegations, the petitioner committed the offence of rape upon the victim on 07.07.2018 on the false pretext of marriage and continued to repeat the act and allegedly, lastly committed rape on 14.11.2020, whereas the present FIR was registered on 08.12.2020 which clearly shows that the same has been registered after due consultations and deliberations so as to falsely implicate the petitioner. There is no explanation regarding delay in lodging the FIR.

He has further contended that the petitioner and the prosecutrix belong to same community and are residents of the neighbouring villages. Since they have joined coaching in the same institute, their relations became cordial and friendly. However, after having coaching, the petitioner got a job in a bank, whereas the prosecutrix could not succeed in getting a job. In the month of March, 2020, the petitioner got some suitable match for himself and his engagement took place. This fact was very much in the knowledge of the complainant-victim being a distant relative. Accordingly, marriage of the petitioner was fixed for 09.12.2020 and after fixation of the date of marriage, intention of the complainant became *mala fide* and dishonest as she was feeling frustrated as she could not get a job, whereas the petitioner got a job

as well as a suitable match, as the proposed bride is also serving in a bank. It is in order to put pressure upon the petitioner to perform marriage with the complainant and to break the engagement with the proposed bride, the present FIR has been registered.

He has further argued that the petitioner has neither committed rape upon the complainant at any point of time nor he made any promise to perform marriage with her. Mere consensual physical relationship, if any, is no offence. In support of his contention, learned senior counsel for the petitioner has relied upon the law laid down by Hon'ble Supreme Court in ***Parmod Surya Bhan Pawar Versus State of Maharashtra and others RCR 2019(4) 135.***

On the other hand, learned State counsel as well as learned counsel for respondent No.2-complainant/victim have argued that it is on the pretext of marriage, the petitioner established relations with the prosecutrix and sexually exploited her for a long time. He repeated physical relations with the prosecutrix by alluring her for marriage which continued till 14.11.2020. His intention was to exploit the prosecutrix.

I have heard learned counsel for the parties.

The judgment referred by learned senior counsel for the petitioner in ***Parmod Surya Bhan Pawar's case*** (supra) has no applicability in the present facts of the case as in that case, the complainant was aware that the marriage could not have been solemnised, but even then, she continued to have relationship with the accused for a long time. But the present is a case where there was no impediment in solemnising marriage between the petitioner and complainant. Interestingly, learned counsel for the complainant

has referred to the *WhatsApp* messages (Annexure R-2/1) exchanged between the petitioner and the complainant. These messages show that despite having been engaged with another girl, the petitioner has been exchanging messages with the prosecutrix-victim. There are specific messages exchanged between the petitioner and the prosecutrix between November 25, 2020 to December 03, 2020, which show that the petitioner has been projecting that he wanted to solemnise marriage with the prosecutrix. Thus, from the *WhatsApp* messages so attached with the present petition as Annexure R-2/1, it can be inferred that the petitioner established physical relations with the prosecutrix on the pretext of marriage.

In a catena of decisions, it has been observed by Hon'ble Supreme Court and this Court that whenever an innocent victim is sexually assaulted, then under such circumstances, it not only leads to physical assault on the victim, but mental as well. Even her right to privacy is affected, as contemplated under Article 21 of the Constitution of India. Once such physical contact has been made under the false promise, it degrades the soul of the helpless victim and in this manner, the victim would be the ultimate sufferer in the society.

In the case of *Anurag Soni Versus State of Chhattisgarh 2019(2) RCR (Criminal) 852*, it has been observed by Hon'ble Apex Court that on the pretext of false promise of marriage, physical contact is developed and subsequently, if the accused refused to marry, then in such like circumstances, the provisions of Section 375 and 376 IPC are attracted, as the consent given by the victim for such physical relation is a consent given under

misconception of the fact, in terms of Section 90 IPC and, therefore, it amounts to rape.

In the case of ***Dr. Dhruvaram Murlidhar Sonar Vesus State of Maharashtra 2019 (1) RCR (Criminal) 674***, Hon'ble Supreme Court has observed that there is a clear distinction between rape and consensual sex. In such cases, the Court must very carefully examine whether the accused had actually wanted to marry the victim or had *mala fide* motives and had made a false promise to this effect only to satisfy his lust, as the later falls within the ambit of cheating or deception. The relevant paragraph No.20 of the said judgment reads as under:

“20. Thus, there is a clear distinction between rape and consensual sex. The court, in such cases, must very carefully examine whether the complainant had actually wanted to marry the victim or had mala fide motives and had made a false promise to this effect only to satisfy his lust, as the later falls within the ambit of cheating or deception. There is also a distinction between mere breach of a promise and not fulfilling a false promise. If the accused has not made the promise with the sole intention to seduce the prosecutrix to indulge in sexual acts, such an act would not amount to rape. There may be a case where the prosecutrix agrees to have sexual intercourse on account of her love and passion for the accused and not solely on account of the misconception created by accused, or where an accused, on account of circumstances which he could not have foreseen or which were beyond his control, was unable to marry her despite having every intention to do. Such cases must be treated differently. If the complainant had any mala fide intention and if he had clandestine motives, it is a clear case of rape. The acknowledged consensual physical relationship

between the parties would not constitute an offence under Section 376 of the IPC.”

Further more, the allegations made by the prosecutrix were corroborated in her statement recorded under Section 164 Cr.PC, as is evident from the order dated 08.01.2021 passed by learned Additional Sessions Judge (Exclusive Court for Heinous Crimes against Women), Yamuna Nagar at Jagadhri.

Moreover, the petitioner and the prosecutrix are otherwise known to each other since the year 2014 when they started coaching for banking exams in Yamuna Nagar and the petitioner used to visit her house. The petitioner was allegedly engaged in the month of March, 2020, whereas he still established physical relations with the prosecutrix even on 14.11.2020 as well despite the fact that his marriage was fixed for 09.12.2020. Thus, once the petitioner got engaged with another girl in March 2020, but even thereafter, he allegedly made physical relations with the prosecutrix on 14.11.2020 whereas his marriage was fixed for 09.12.2020, it can be inferred that he made false promise to the prosecutrix to marry her and on the pretext of such false promise, made physical relations with her. Therefore, this Court does not find any reason to grant anticipatory bail to the petitioner.

The present petition is, accordingly, dismissed.

February 24, 2021

Yag Dutt

**(HARI PAL VERMA)
JUDGE**

Whether speaking/reasoned:

Yes

Whether Reportable:

No