

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

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CRM-M-10123-2021 (O&M)

Date of decision: 08.03.2021

Jitender Sharma

.....Petitioner

Versus

State of Union Territory Chandigarh

.....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

Present : Mr. Vinod Ghai, Sr. Advocate with
Mr. Aman Bansal, Advocate and
Ms. Kanika Ahuja, Advocate
for the petitioner.

ARUN KUMAR TYAGI, J. (ORAL)

CRM-6521-2021

For the reasons mentioned in the application, the same is
allowed and Annexures P-1 and P-2 are taken on record.

CRM-M-10123-2021

The petitioner has filed this petition under Section 438 of
the Code of Criminal Procedure, 1973 (for short, "the Cr.P.C") for grant
of anticipatory bail in case FIR No.10 dated 08.02.2021 registered
under Section 376(2)(n) of the Indian Penal Code, 1860 at Police
Station North, District Chandigarh.

Learned Senior Counsel for the petitioner has submitted
that the complainant was known to the petitioner for the last three
years. The petitioner has been falsely implicated in the case by the
complainant with ulterior motive to wreck vengeance. There is undue
and unreasonable delay in lodging of the FIR which makes the
allegations made in the FIR highly doubtful. FIR was got registered on
false, vague and baseless allegations. Even if the allegations are taken
to be true even then no offence is made out as physical relation by the

petitioner with the complainant was consensual and her consent could not be said to have been obtained under any fraudulent misrepresentation with regard to promise of marriage or giving job.

Notice of motion.

Pursuant to supply of advance copy, Mr. Ashu Mohan Punchhi, Public Prosecutor for U.T. Chandigarh has appeared along with Mr. Anupam Bansal, Additional Public Prosecutor for U.T., Chandigarh and accepted notice on behalf of the respondent.

At this stage, Mr. Puneet Sharma, Advocate has also put in appearance on behalf of the complainant and filed his power of attorney which is taken on record.

I have heard learned Counsel for the petitioner, learned Public Prosecutor and learned Counsel for the complainant and have gone through the record.

Learned Senior Counsel for the petitioner has, while reiterating his above referred submissions, further submitted that the petitioner is ready to join the investigation and he may be granted anticipatory bail as his custodial interrogation is not necessary in the case.

In support of his arguments, learned Senior Counsel for the petitioner has placed reliance on the observations in ***Maheshwar Tigga Vs. State of Jharkhand : (2020) 10 SCC 108; Pramod Suryabhan Pawar Vs. State of Maharashtra and another : (2019) 9 SCC 608; CRM-M-10175-2019 titled as 'Akash Verma Vs. State of Haryana' decided on 01.05.2019 and CRM-M-20333-2019 titled as 'Deepak Pathania Vs. State of Punjab' decided on 10.07.2019.***

On the other hand, learned Public Prosecutor for U.T., Chandigarh has submitted that the petitioner is alleged to have committed rape on the complainant by obtaining her consent by making false promise to marry and to give her a job. The complainant has given an affidavit to the police regarding compromise of the matter but the complainant cannot be allowed to misuse the process of law by initially lodging the FIR on allegations of rape and subsequently withdrawing the same. Custodial interrogation of the petitioner is required for thorough investigation of the case. In view of nature of accusation and gravity of offences, the petitioner does not deserve grant of anticipatory bail and the petition may be dismissed.

Learned Counsel for the complainant has admitted the genuineness of the affidavit by placing on record original affidavit of the complainant and submitted that the FIR was got registered under some misunderstanding and the complainant has no objection if the petitioner is granted anticipatory bail.

In view of the facts and circumstances of the case, nature of accusation against the petitioner, affidavit of the complainant, custodial interrogation of the petitioner not being necessary in the case, and there being no material to justify the apprehension of the petitioner fleeing from justice or tampering with evidence or criminally intimidating the prosecution witnesses, but without expressing any opinion on the merits of the case, I am of the considered view that the petitioner deserves the grant of anticipatory bail.

In view of the above, the petition is allowed. The petitioner is directed to join the investigation as and when called upon to do so.

In the event of his arrest, the petitioner shall be released on anticipatory bail by the arresting officer/investigating officer on furnishing of bail bonds by him to the satisfaction of the arresting officer/investigating officer. The petitioner shall abide by the conditions enumerated in Section 438 (2) of the Cr.P.C., failing which the protection of anticipatory bail order shall not be available to him.

08.03.2021

Vinay

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ARUN KUMAR TYAGI)
JUDGE