IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-11622-2020 (O&M)
Date of Decision: September 30, 2021

Naveen Sharma

...Petitioner

Versus

State of Punjab and another

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. J.S. Bhinder, Advocate
for the petitioner.

Ms. Rashmi Attri, AAG Punjab.

Mr. I.S. Kooner, Advocate
for respondent No.2.

****

JAISHREE THAKUR, J. (Oral)

The instant petition has been filed under Section 438 Cr.P.C. for grant of anticipatory bail to the petitioner in FIR No.08 dated 12.01.2020, registered under Section 376 of Indian Penal Code at Police Station Women Patiala, District Patiala.

Learned counsel appearing on behalf of the petitioner herein would contend that the allegations as set out under Section 376 of IPC are patently false as the petitioner and the complainant were in a relationship, as would be evident from the contentions raised in the FIR. It is argued that the contention of the complainant that she had consented for the physical relationship, as the petitioner had promised marriage is wrong. Counsel for

VIJAY SAINI
2021.10.04 11:04
I attest to the accuracy and
integrity of this document

the petitioner would submit that merely because the petitioner failed to perform the marriage that itself would not constitute the offence of rape.

The proceedings in this case have a slightly checkered history. While challenging the order dated 26.02.2020 dismissing the anticipatory bail application by the court below, a statement had been made before this Court on 16.06.2020 that the petitioner herein had been advised bed rest for 09 months on account of fracture and he sought to rely upon a certificate issued by a doctor. A statement had also been made that the prosecutrix is aged 45 years. This court had taken note of the objection raised by the State counsel that the certificate relied upon by the petitioner advising 09 months bed rest did not appear to be genuine. The petitioner had been allowed to join the investigation and an opportunity was also given to the State counsel to verify the genuineness of the certificate relied upon by the petitioner.

Counsel for the complainant has also put in appearance to oppose the bail application and has also filed an application.

A status report dated 18.09.2020 filed by the State has been made available, which would reflect that the petitioner had a misalignment of tibia at fracture site and was unable to walk properly. The Medical Board took into account the statement of Dr. Upinder Singh that the petitioner herein wanted to get a consolidated rest certificate to claim salary, as he is government employee, so the certificate was issued from 06.10.2019 to 05.07.2020 and he did not put any date or registration number on it. The Medical Board came to the conclusion that the rest advised and that too after seven and half months of the surgery at one stretch was not justifiable.

It appears that the petitioner herein in active connivance with

VIJAY SAINI
2021.10.04 11:04
I attest to the accuracy and
integrity of this document

Dr. Upinder Singh, who is not before this court, had obtained a certificate to try and mislead the court in obtaining the anticipatory bail. The question whether bail ought to have been allowed under Section 376 of IPC or not would pale into insignificance, now given the fact that the petitioner herein has misled this Court and has not approached with clean hands. Even though the petitioner has joined the investigation, this court deems it appropriate not to entertain this petition or confirm the interim bail allowed to him only because the petitioner has not fairly approached this court.

In view of the above, the instant petition is hereby dismissed.

The misc. application bearing CRM No.23050-2020 filed by the complainant-respondent No.2 seeking recalling of interim anticipatory bail to the petitioner is disposed of having rendered infructuous.

(JAISHREE THAKUR)
JUDGE

September 30, 2021
vijay saini

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

VIJAY SAINI
2021.10.04 11:04
I attest to the accuracy and
integrity of this document