

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

**CRM-M No.23307 of 2020(O&M)
Date of Decision: 29.04.2021**

Krishan Lal

.....Petitioner

Vs

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Anil Ghanghas, Advocate
for the petitioner.

Ms. Gaganpreet Kaur, AAG, Haryana.

Mr. Sagar Aggarwal, Advocate
for the complainant.

(Proceedings through video-conferencing)

RAJ MOHAN SINGH, J.

CRM No.2716 of 2021

This is an application under Section 482 Cr.P.C for impleading applicant Rajni Bala wife of Krishan Lal as party respondent No.2. Complainant has already appeared through her counsel in numerous proceedings conducted before this Court from time to time.

In view of aforesaid position, applicant Rajni Bala is ordered to be impleaded as respondent No.2 in the interest of justice.

Application stands allowed.

CRM No.2718 of 2021

This is an application under Section 482 Cr.P.C seeking exemption from filing certified copies of Annexures A1 to A-5 as well as placing on record Annexures A-1 to A-5.

For the reasons mentioned in the application, the same is allowed. Production of certified copies of Annexures A-1 to A-5 is dispensed with subject to all just exceptions. Amended memo is also taken on record.

CRM No.25458 of 2020

This is an application under Section 482 Cr.P.C filed by the petitioner for placing on record additional documents Annexures P-4 to P-14 on record.

Since the application filed by the complainant seeking exemption from filing certified copies of Annexures A-1 to A-5 is allowed subject to all just exceptions, therefore, the present application on behalf of the petitioner is also allowed and additional documents are taken on record subject to all just exceptions.

Main case

[1]. The petitioner seeks grant of anticipatory bail under Section 438 Cr.P.C in case bearing FIR No.626 dated 20.07.2020 registered under Section 376 IPC (offences under Sections 109, 328, 354-B, 506 and 509 IPC added later on) at Police Station Thanesar City, District Kurukshetra.

[2]. The FIR was registered at the instance of Rajni Bala with the allegations that the petitioner after alluring the complainant and misguiding her for the last 4 years on the pretext of marrying her, committed rape upon her by taking her to different places. The accused/petitioner got her passport prepared and took her to Singapore and Malaysia and developed physical relations with her forcibly. Complainant further alleged that the wife of the petitioner namely Anju was also in connivance with him, to whom the accused called her as his Bhabhi. The allegations are that the petitioner committed rape upon the complainant for the last four years under the pretext of marriage. He got prepared the passport of the complainant and one affidavit to show that the marriage was solemnized with the complainant. Complainant has also alleged some transactions in which earnest money was given to the petitioner.

[3]. Learned counsel for the petitioner submitted that the

petitioner is 44 years of age and the complainant is 51 years of age and is having grandson of the age of two and half years. Complainant got sale deed dated 29.06.2006 registered in the office of Sub Registrar by introducing herself as a buyer being wife of Mohan Lal. The mutation was also sanctioned in the name of the complainant in the revenue record. In the complaint filed by the complainant prior to the FIR, she introduced herself to be wife of late Sh. Satish Kumar. In the affidavit dated 24.07.2017, she pleaded herself to be wife of the petitioner. She obtained her passport with the credentials of wife of the petitioner by submitting the affidavit dated 24.07.2017. Learned counsel placed on record accompanying documents in CRM No.25458 of 2020 in order to explain the statement of learned counsel for the petitioner recorded vide order dated 22.09.2020. Learned counsel further submitted that the petitioner in person was not present at the time of hearing and arguing counsel made the statement on the basis of documents in good faith as he could not discuss the said aspect during hearing with learned counsel for the petitioner who is hard of hearing. After completion of hearing, the then Advocate was apprised about the query.

[4]. Learned counsel with reference to the documents submitted that his elder brother Shamsheer Singh died on

25.09.2005, leaving behind his bhabhi namely Anju and son Harsh born in the year 2002. Family members solemnized *Karewa* of the petitioner with Anju in the year 2006 and thereafter, Anju became legally wedded wife of the petitioner by customs. Son namely Tanishq was born out of this wedlock in the year 2007. In the ration card, all the family members of the petitioner reflects the aforesaid position and same is the position in the Aadhaar Card, which are collectively attached as Annexures P-4 and P-5 as additional documents with this petition. The complainant at the age of 35 and mother of a son took divorce from her earlier husband and solemnized marriage on 12.06.2003 with one Mohan Lal according to Hindu Rites and Ceremonies. Mohan Lal was 33 years of age at that time. They got their marriage registered with the Registrar of Marriage, Thanesar on 31.12.2004 (Annexure P-8).

[5]. Thereafter, the complainant filed a divorce petition against Mohan Lal on the ground of cruelty on 12.05.2012 before District Judge, Kurukshetra. On 30.07.2012, she made a statement before the District Judge, Kurukshetra to withdraw the said petition. The Court vide order dated 30.07.2012 dismissed the petition as withdrawn on the basis of statement made by learned counsel for the complainant. Mohan Lal was involved in a criminal case registered under NDPS Act on 18.07.2016 and

was arrested. During this period, she came into contact with the petitioner in order to sell her house. Petitioner is a property dealer. Relationship between the petitioner and the complainant developed with the consent. In the year 2016, the petitioner was 40 years of age and the complainant was 47 years of age. Petitioner and the complainant got their passport prepared as husband and wife on the basis of affidavit dated 24.07.2017 in order to ward off any objection while going abroad for the purpose of living together. The aforesaid exercise was with the consent of the complainant despite the fact that they were not legally wedded couple. Complainant and her son were regular visitors of the house of the petitioner on every occasion for celebrations. Even on birthday of son of the petitioner namely Harsh, complainant and her son visited the house of the petitioner on 10.05.2020 and got their photographs clicked in a happy note while offering cake to the son of the petitioner (Annexure P-12). Mohan Lal was ultimately sentenced to undergo rigorous imprisonment for two years vide order dated 31.10.2018 and his sentence was suspended by the High Court on 28.03.2019. Complainant is legally wedded wife of Mohan Lal from whom she has not obtained any legal divorce (except to allege that she has obtained some Panchayati divorce).

[6]. With the aforesaid documents and background, learned

counsel for the petitioner seeks to explain the statement which was made before this Court on 22.09.2020.

[7]. *Per contra*, learned counsel for the complainant submitted that the petitioner developed physical relations with the complainant under the pretext of marriage. He got the passport of the complainant prepared and also got executed joint affidavit duly signed by him in the context of marital status of the petitioner viz-a-viz the complainant. Documents Annexures A-1 to A-4 are sought to be produced in order to show matrimonial status of the petitioner with the complainant in the passport, Aadhaar Card and Ration Card. Annexure A-5 relates to Panchayati divorce between the complainant and Mohan Lal.

[8]. Having heard learned counsel for the parties, I find that there was some relationship between the petitioner and the complainant. Complainant as of now is about 51 years of age having grandson. Complainant was on visiting terms with the family of the petitioner and she along with her family used to visit the house of the petitioner on ceremonial occasions like birthday etc. She visited Singapore and Malaysia with the petitioner. There are entries of matrimonial status in the passport and joint affidavit of the parties, which according to the petitioner were prepared in order to ward off any objection in the

foreign country for living smoothly. Complainant alleged that the petitioner made consensual relationship under the pretext of marriage. Complainant was also married to Mohan Lal from whom she has not taken any divorce by lawful mechanism except to allege that a Panchayati divorce was obtained by her (Annexure A-5 undated).

[9]. The wholesome consideration of the case would show that the parties are in advance stage of their life. Both are having families. The factum of petitioner being already married is evident from the photographs of birthday celebration of son of the petitioner, which was attended by the complainant and her son. In the light of consensual relationship, it would remain debatable as to whether offence under Section 376 IPC is attracted or not.

[10]. In view of aforesaid facts and circumstances of the case, the present petition is allowed. Petitioner is directed to appear before the SHO/Investigating Officer to join investigation on 04.05.2021 at 11:00 AM and in the event of his arrest, he shall be released on anticipatory bail on his furnishing adequate bail bonds/surety bonds to the satisfaction of SHO/Investigating Agency subject to the following conditions as envisaged under Section 438(2) Cr.P.C:-

- i) that the petitioner shall make himself available

for interrogation before the Investigating Officer
as and when required;

- ii) that the petitioner shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the Court or to any police officer;
- iii) that the petitioner shall not leave the country, without prior permission of the Court and shall surrender his passport, if any.

29.04.2021
Prince

(RAJ MOHAN SINGH)
JUDGE

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