

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

101

CRM-M-24392 of 2020
Date of Decision: 01.03.2021

Mohammad Qasim

..... Petitioner

Versus

State of Haryana

..... Respondent

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. Tejinder Pal Singh, Advocate,
for the petitioner.

Mr. Lekhraj Sharma, Advocate,
for the complainant.

Mr. Apoorv Garg, DAG, Haryana.

AMOL RATTAN SINGH, J. (ORAL)

Case heard via video conferencing

By this petition, the petitioner seeks the concession of 'anticipatory bail' under the provisions of Section 438 of the Cr.P.C., upon FIR no.49, dated 21.06.2020, having been registered at Police Station Women, Ambala City, District Ambala, alleging therein the commission of offences punishable under Sections 323, 376, 420 and 506 of the IPC.

At the time when the notice of motion was issued on 26.08.2020, the following order had been passed by this court:-

“Prayer in this petition is for grant of anticipatory bail to the petitioner in FIR No.49, dated 21.06.2020, under Sections 323, 376, 420, 506 IPC, registered at Police Station Women, Ambala City, District Ambala.

Learned counsel contends that a false case has been brought forth for extraneous reasons. He further contends that the petitioner was a trader of shoes for men and women in Agra. For expansion of his business he would often visit Ambala where he chanced to meet the complainant and they became friends. Thereafter, the complainant would collect the money pertaining to the business transactions on his behalf and later would transfer the same in his account in Agra. Further contends that the complainant with an ulterior motive to misappropriate the amount so collected on behalf of the petitioner has falsely implicated him in the FIR in question. Further contends that the contents of the FIR clearly reveal that the petitioner was a consenting party and the petitioner had never refused to marry her.

Notice of motion for 14.09.2020.”

Thereafter, on 23.11.2020, the following order was recorded:-

“Learned counsel for the petitioner submits that even as per the contents of the FIR, as also the statement made by the prosecutrix under the provisions of Section 164 of the Cr.P.C., she admitted that she was living in a consensual relationship with the petitioner and therefore the question of any rape having been committed does not arise.

Mr. Sharma, learned counsel for the complainant, on the other hand submits that the prosecutrix at the time that she entered into the relationship was admittedly only 19 years old though she may be 27 years old today; and though she continued to live with the petitioner in a live-in relationship on a promise made by him to marry her, which he never fulfilled, therefore in fact it would amount to rape.

Since a similar question is also coming up in CRM-M-23858 of

2020, on December 02, 2020, adjourned to the same date.

In the meanwhile, till that date only and specifically, the petitioner be not arrested.

It is made clear that any request for an adjournment on that day on behalf of the counsel for the petitioner would result in 'automatic' vacation of the interim order, with no further order required to be passed in that regard."

On December 02, 2020, the petitioner was ordered to be admitted to interim bail upon him joining investigation (if he was sought to be arrested).

Other than the earlier order having been reproduced, the following directions were given. That part of the order is being reproduced:-

"Today, learned counsel for the petitioner has addressed arguments to the effect that the petitioner though was initially willing to marry the prosecutrix, however, subsequently with differences having arisen between them in their ways of life, he is no longer willing to get married to her and as regards the relationship, he submits that with the prosecutrix having lived with him in Panchkula, Ambala etc., obviously it was a consensual relationship and not a forced one.

Mr. Sharma, learned counsel for the complainant, on the other hand submits that the petitioner having, firstly, falsely lured the prosecutrix into a physical relationship under the promise of marriage, thereafter continued that relationship under that promise and even by threatening her.

He further submits that she was duped of her money also and consequently he does not deserve the concession of even interim anticipatory bail.

Learned State counsel submits that the allegations against the petitioner, even as per the FIR and the statement made by the complainant under the provisions of Section 164 of the Cr.P.C., being

obviously very serious, with money also to be recovered from him which he (as per the allegation) forced her to give him during the course of that relationship, and with him also having made her sign on blank papers which also need to be recovered alongwith his mobile phone, he does not deserve to be admitted to interim bail.

Learned counsel for the petitioner submits that as regards the money which the prosecutrix deposited in the account of the petitioner, he would return the money to her.

He also undertakes to hand over to the investigating agency the mobile phones used by the petitioner”

On December 16, 2020, learned State counsel having informed this court that the petitioner had refused to get himself medically examined in terms of Section 53-A of the Code of Criminal Procedure, 1973, this court had directed that if the petitioner does not get himself examined through the investigating officer, by a doctor in a Government Hospital, the interim order would stand vacated and that the petitioner may be arrested for getting him examined (with the said provision granting the power of his arrest for that very purpose, to the arresting officer).

It was also directed that after his examination he may be released on the same bail and surety bonds already furnished till the next date of hearing, and of course in case of him voluntarily submitting to such examination, the interim order would continue to operate in his favour.

On 21.12.2020 this court was informed that the petitioner had got himself medically examined and as regards the issue of the mobile numbers which he used in June 2020, the petitioner had told the investigating officer that he had thrown away a mobile phone of Vivo V-9 make and therefore he could not that hand over; and as regards the other mobile phone, on which he was alleged to have

been speaking to other women with whom also he was allegedly having physical relations (as per the complainant), that phone was stated to have been handed over by him to the complainant, which in fact had been handed over to the investigating officer by the complainant.

It was also stated that a cheque for an amount of Rs.70,000/- had been handed over to the investigating officer, though with the cheque stated to have been dated 25.01.2021 and consequently, this court had directed that within 5 days from 21.12.2020, the petitioner would deposit a demand draft in favour of the complainant, with the Area Magistrate, Ambala, with the said DD to be handed over to the complainant in the presence of the learned Magistrate (as the petitioner had not denied that he had been receiving money from the prosecutrix, though he had contended it was lesser than Rs.70,000/- but had nevertheless agreed to pay it as he was being admitted to interim bail).

The petitioner was also directed to give the mobile sim number that he was using in the aforementioned Vivo V-9 make phone, with the SP, Ambala, directed to obtain the phone call detail records and thereafter determine as to whether the petitioner was also making calls to different women/girls during the period in question.

The investigating officer was also directed to determine the IMEI number of the phone from which the sim number, as the petitioner would provide, was being used.

Similarly, the call detail records of the number being used in the Samsung mobile as had been handed over to the investigating officer by the complainant was also directed to be determined; (the allegation of the complainant being that the petitioner was never serious in marrying her though he was

promising to do so and therefore continuing physical relations with her on that pretext, but with her coming to know that he was also speaking to many other girls, which obviously would show that he was not serious about marrying her).

The contention of learned counsel for the complainant had also been recorded in that order (dated 21.12.2020) to the effect that the complainant was being threatened by the petitioner through his father and possibly by some persons 'incharge of' religious institutions in the area (though learned counsel for the petitioner had denied that).

However, a direction was also given to the SP, Ambala and the DCP, Panchkula, to ensure that the life and liberty of the complainant was duly protected at the hands of the petitioner and any person connected with him.

[The order in fact erroneously states (due to a typographical error) that the life of the petitioner would be duly protected at the hands of the complainant and any person connected with him (*sic*).]

Thereafter the matter had been adjourned twice on the request of learned counsel for the complainant, with it having been again taken up for hearing on 19.02.2021.

On that date, learned counsel for the State as also the complainant had both submitted that the petitioner had undertaken before this court on 02.12.2020 that he would surrender his mobile phones to the investigating officer but with him having thereafter surrendered only one phone; and he however having stated that the other one had broken/had been thrown away, he had violated the condition of the bail and therefore the petition deserves to be dismissed.

This court had, however, after going through the order dated 02.12.2020 again, recorded that as per one of the replies filed on behalf of the

respondent State, it was stated that he was found to have been in regular conversation with only one girl and that too because the girl stated that she was in a 'Whatsapp' group with him on the issue of the use of a *hijab*.

A query had also been put by this court to learned counsel for the complainant as to why, in the aforesaid circumstances, the complainant being an adult and having admittedly continued in a relationship over a period of some years with the petitioner, he should be denied the concession of bail, to which learned counsel had submitted that he having forced her into an illicit relationship on the pretext of marriage and thereafter he not having married her, and further, also having given her beatings etc., the petition deserves to be dismissed.

However, on query as regards any MLR in respect of any injury received by her, he had not been able to produce it.

Consequently, the matter was adjourned till today for final arguments, to enable learned counsel for the parties to rely on whatever judgments they wished to, on the issue.

Today learned counsel for the petitioner relies upon the following judgments:-

- 1) **Pramod Suryabhan Panwar v. State of Maharashtra 2019 (4) RCR (Criminal) 135;**
- 2) **Deepak Gulati v. State of Haryana 2013 (3) RCR (Criminal) 96;** and
- 3) **Rajan Sharma v. U.T. Chandigarh (CRM-M-2385 of 2020, decided on 22.12.2020).**

Learned counsel for the State has relied upon the following judgments:-

- 1) **Dhruvam Murlidhar v. State of Maharashtra 2019 (1) RCR**

(Criminal) 674;

- 2) **Anurag Soni v. State of Chattisgarh** 2019 (2) RCR (Criminal) 852;
- 3) **Shity Gaur v. State of Haryana** 2016 (5) RCR (Criminal) 31;
and
- 4) **Sachin Tukaram Muneshwar v. State of Maharashtra** 2015 (31) RCR (Criminal) 79.

Mr. Lekhraj Sharma, learned counsel for the complainant, has relied upon the following judgments:-

- 1) **State v. Naushad** (2013) 16 SCC 651; and
- 2) **Yadvan Sreenivasan** 2006 (4) RCR (Criminal) 474.

Other than that, learned counsel for the complainant again reiterates that the petitioner having continuously promised the complainant that he would marry her, with her even having left her family for him, but with him thereafter not having married her and he in fact having threatened her through a former Municipal Councillor and some persons concerned with religious institutions, and even through his father; and further, he even having stated before the police and before this court itself on 26.08.2020 (when notice of motion was issued in the petition), that he had never refused to marry her, but with him having constantly backed out of that promise, he does not deserve to be admitted to bail and therefore the interim order passed in his favour also deserves to be vacated.

In that context, he also submitted that even as regards the police, initially the petitioner had been able to exercise influence over them due to which the complainant was refused protection unless he paid for such protection; and further, he was allowed to leave the police station even before he was admitted to

bail, simply upon him stating that he would marry her, but with him again not having fulfilled the promise and he not having thereafter (after 26.08.2020), ever having assured this court also that he would marry her.

Even today, counsel for the petitioner has not stated that the petitioner would marry the complainant (that is even if she wishes to now marry him).

Having considered all the aforesaid facts, it is first to be observed here that, essentially, the ratio of most of the judgments cited by the parties, is that courts must appreciate the difference between the consent given by a prosecutrix knowing all facts, and consent given under a mis-conception of fact.

In that context, paragraphs 15 and 18 of the judgment in *Deepak Gulati* (supra) (Law Finder Edition) are reproduced hereinbelow:-

“15. Section 114-A of the Indian Evidence Act, 1872 (hereinafter referred to as the 'Act 1872') provides, that if the prosecutrix deposes that she did not give her consent, then the Court shall presume that she did not in fact, give such consent. The facts of the instant case do not warrant that the provisions of Section 114-A of the Act 1872 be present into service. Hence the sole question involved herein is whether her consent had been obtained on the false promise of marriage. Thus, the provisions of Sections 417, 375 and 376 Indian Penal Code have to be taken into consideration, alongwith the provisions of Section 90 of the Act 1872. Section 90 of the Act 1872 provides, that any consent given under a misconception of fact, would not be considered as valid consent, so far as the provisions of Section 375 Indian Penal Code are concerned, and thus, such a physical relationship would tantamount to committing rape.”

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“18. Consent may be express or implied, coerced or misguided, obtained willingly or through deceit. Consent is an act of reason,

accompanied by deliberation, the mind weighing, as in a balance, the good and evil on each side. There is a clear distinction between rape and consensual sex and in a case like this, 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 latter falls within the ambit of cheating or deception. There is a distinction between the mere breach of a promise, and not fulfilling a false promise. Thus, the court must examine whether there was made, at an early stage a false promise of marriage by the accused; and whether the consent involved was given after wholly, understanding the nature and consequences of sexual indulgence. 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 mis-representation made to her by the 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 so. Such cases must be treated differently. An accused can be convicted for rape only if the court reaches a conclusion that the intention of the accused was *mala fide*, and that he had clandestine motives.”

To similar effect, are the judgments in *Parmod Suryabhan Panwar* (supra) (reference paragraph 16, Law Finder Edition) and *Anurag Soni* (supra) (reference paragraph 14, Law Finder Edition).

In the present case, at least for the purpose of this petition by which the petitioner seeks to be admitted to 'anticipatory bail', he would seem to have promised marriage to the complainant even as recorded in the order dated 26.08.2020 before this court (a co-ordinate Bench), but with him not having fulfilled that promise, with learned counsel for the complainant also having submitted that the call detail records can be obtained to show that the petitioners'

father also rung up the complainant, which would prove (as contended) that the call having taken place, it was actually a call made to threaten her.

Even though obviously this court cannot comment on whether she was actually threatened by the petitioners' father or not, but looking at the fact that despite him having even stated through his counsel before this court on 26.08.2020 that he never refused to marry her, but with him today also not willing to marry her, but she having remained, at least for a long period of time, under that impression, due to which she is stated to have continued in a relationship, with him also allegedly blackmailing/threatening her, etc., I would not be inclined to continue the interim order passed in favour of the petitioner any further.

Even, for a moment, if it is to be accepted that in the absence of any strict proof of any threats actually meted out to her (though learned counsel for the complainant submits that strong inference can be taken in that regard from the phone calls etc.), the petitioner having backed out from his promise of marrying her, obviously he was not sincere about such promise and continued in a physical relationship with her only on account of that mis-conception in her mind.

Further, though he had agreed to give his mobile phones as were used by him, eventually he did not give at least one of them (Vivo V-9 make), taking an excuse that he had thrown it away/it had broken.

Hence, whether that it is a true contention or it was just other ruse to obtain bail from this court, as was his contention that he would marry the complainant, I would find no reason for the interim concession granted to him to continue any further.

Consequently, this petition is dismissed and the interim order passed on 02.12.2020 is hereby vacated.

Naturally, all observations made by this court in any orders passed in this petition are in the context of a petition seeking that the accused be admitted to bail under the provisions of Section 438 of the Cr.P.C. and as regards the merits of the case, that would proceed in the light of the evidence gathered by the investigating agency and led before the trial court (if it comes to that stage).

March 01, 2021
dinesh

(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	Yes