

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

CRM-M-37849-2021

Date of decision : 13.09.2021

Talwinder Singh

.... Petitioner

Versus

State of Punjab

.... Respondent

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Manoj Kumar, Advocate
for the petitioner.

RAJESH BHARDWAJ, J.

Matter has been taken up through video conferencing via Webex facility in the light of the Pandemic Covid-19 situation and as per instructions.

Prayer in the present petition filed under Section 438 Cr.P.C. is for grant of anticipatory bail to the petitioner in case FIR No.139 dated 20.06.2021, under Section 376 IPC, at Police Station Mataur, District SAS Nagar (Mohali).

This is the second petition filed by the petitioner for grant of anticipatory bail. Earlier the petitioner approached this Court and after detailed arguments, learned senior counsel at that time prayed for withdrawal of the same. Thus, the petition was dismissed as withdrawn vide order dated 12.08.2021.

Learned counsel for the petitioner has contended that though, there are no new circumstances than the earlier, however, the petitioner has been roped in a false case on the basis of the frivolous allegations made by

the complainant. He submits that the complainant is major and FIR has been lodged on the basis of the allegations that the petitioner entered into physical relationship with the complainant by making a promise for the marriage with the complainant. He would submit that the petitioner who is employed in the police department had never compelled the complainant and they were in relationship from last more than 1 ½ years. He has submitted that both of them had been at number of places with the consent of each other, so there was no cheating on the part of the petitioner. He submits that in view of the attending circumstances of the case, there was no misconception of the fact on the part of the petitioner and thus, by no stretch of imagination, the offence under Section 376 IPC said to have been made out. Thus, he submits that no case for the custodial interrogation is made out and hence, anticipatory bail be granted. He relied upon the judgment titled as **Pramod Suryabhan Pawar Vs. State of Maharashtra 2019(9) SCC 608.**

I have heard counsel for the petitioner and perused the record.

Needless to say that this is the second attempt made by the petitioner and the case was argued in detail at the first attempt and this Court was not inclined to accept the arguments raised by counsel for the petitioner and as a result, it was dismissed as withdrawn. I find no new ground taken than the first in the second attempt also. However, for brevity it is appropriate to mention that the petitioner is employed in police and as per the record both, the complainant and the petitioner are unmarried and of almost same age. The alleged physical relationship had been established time and again with each other and finally as per the allegations, the marriage as promised could not be accepted by the petitioner for the reason

that the elder members of the family are not agreed with the same. Though, it would not be appropriate for this Court to give any opinion on the merits of the case at this stage, however, in the facts and circumstances, this Court finds that the judgment of the Hon'ble Apex Court relied upon by counsel for the petitioner is distinguishable. In the facts and circumstances of the present case, thus, the precedents cited do not come to the rescue of the petitioner as the complainant had specifically alleged that her consent for physical relationship was taken on the promise made to her that the petitioner who is unmarried would marry her. However, denying the same after 1 ½ years and threatening her to be killed, are the specific allegations made by the complainant.

Learned counsel for the petitioner has also relied upon the fact that the complainant refused to go under the medical test. The disputed question of fact are purely the domain of the trial Court to be dealt on the basis of the evidence led by the parties. In the overall facts and circumstances of the case, this Court finds that neither the case of the petitioner qualify on the parameters of Section 438 Cr.P.C. nor is covered by the judgment relied upon by learned counsel for the petitioner.

This is a case where custodial interrogation would be required for unraveling the truth in the allegations. The petition being devoid of any merits, is hereby, dismissed.

(**RAJESH BHARDWAJ**)
JUDGE

13.09.2021
m. sharma

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No