

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

223

CRM-M-38485 of 2020

Date of decision:25.01.2021

Arjun Bakshi

... Petitioner

Vs.

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. Ajaivir Singh, Advocate
for the petitioner.

Mr. Abhinash Jain, Deputy Advocate General, Haryana
for the respondent-State.

Mr. Rahul Gautam, Advocate
for the complainant.

SUVIR SEHGAL J.

Instant petition has been filed under Section 439 of the Code of Criminal Procedure seeking regular bail in case FIR No.83 dated 26.08.2020 registered under Sections 376(2)(n) and 406 of Indian Penal Code, 1860 at Police Station Women Manesar, District Gurgaon.

As per the version of the prosecution, the FIR was lodged on the complaint of the prosecutrix, wherein she stated that she is 23 years old and is working in a reputed IT Company where she met Arjun Bakshi (present petitioner). They were working together in the company. They started their relationship in November 2018. She stated that they established physical relations at Gurgaon and when she refused to continue further with the relationship, the petitioner said that he will marry her. In September 2019, they took an apartment on rent where they lived together. Their relationship continued till 01.06.2020. The prosecutrix kept trying to convince the petitioner to marry her but he did not agree. She then

submitted a written complaint against the petitioner with the police. Her statement was recorded under Section 164 Cr.P.C and the petitioner was arrested on 31.08.2020.

Counsel for the petitioner has argued that the relationship between the two was consensual and the petitioner did not develop physical relationship with the prosecutrix on the assurance of marriage. He has referred to the rent agreement dated 23.09.2019 (Annexure P-2), to contend that they had jointly taken an apartment on rent and had stayed together for almost one year. Still further, he places reliance upon the statement/affidavit dated 03.11.2020 (Annexure P-5) wherein the prosecutrix has submitted that the complaint had been lodged by her on account of some differences which now stand resolved and she withdraws all the allegations against the petitioner. Counsel contends that the FIR was registered by the prosecutrix in a huff as the relationship between the parties could not culminate into marriage. He submits that the investigation is complete, challan has been presented and the petitioner is no longer required for custodial interrogation.

Per contra, State counsel upon instructions from ASI Suman, has opposed the petition. He submits that the allegations are of serious nature and they show that the petitioner had raped the prosecutrix on the false assurance of marriage. He has made a reference to the challan, which had been presented in the Court on 08.10.2020, and submitted that there are 07 prosecution witnesses. As per his instructions, the charge is yet to be framed.

Counsel representing the complainant-prosecutrix has supported the petitioner and admitted the factum of prosecutrix having executed the affidavit (Annexure P-5). He has instructions to state that the

complainant has withdrawn all the allegations and is prepared to appear before the Court and make a statement in support of the petitioner.

I have considered the respective submissions of the parties.

The prosecutrix has executed a statement/affidavit on 03.11.2020 (Annexure P-5), the relevant extract of which is as under:-

“2. That Arjun Bakshi s/o Yashpal Bakshi, r/o Vill.Sidhaura, District Yamunanagar, Haryana was also working in the same office since January, 2020 and even at present is posted as Process Associator.

3. That the deponent and Arjun Bakshi have known each other since November 2018 and both are unmarried. In the month of September 2019, both, the deponent and Arjun Bakshi decided to live together at Gurugram and took an apartment on lease together.

4. That unfortunately, differences arose between the deponent and Arjun Bakshi while living together for almost one year and the deponent lodged a complaint with the Women Police Station at Gurugram, following which FIR No.83 dated 26.08.2020 under Section 376(2)(n)/406 IPC was registered. The said complaint/FIR was got registered by the deponent in a state of anger and misunderstanding, whereas mutual friends, family and respectables have counseled the deponent and Arjun Bakshi to look ahead with respect to the career and to marry any person as per their wish, in future.

5. That keeping the said fact in mind and that the present FIR would hamper the prospects for both parties, the deponent

has decided to withdraw all the allegations leveled against Arjun Bakshi, as being an outcome of differences of thought and misunderstanding between Arjun Bakshi and the deponent.

6. *That the deponent undertakes to appear, submit and sign any document in pursuance of withdrawal of such allegations as well as for quashing of the FIR against Arjun Bakshi, at any point of time, before any competent Court of law.*

7. *That the deponent is executing such a statement/affidavit with her own mind, will and consent, without any undue pressure or coercion from any quarters and without any consideration of any sort.”*

In order to verify the authenticity of the statement/affidavit, this Court, vide order dated 25.11.2020 directed the State to verify it and submit a report. In compliance, a status report by way of affidavit of Assistant Commissioner of Police, CAW Manesar, Gurgaon has been filed on behalf of the respondent-State, wherein it has been *inter alia*, deposed as under:-

“4. That as per directions of this Hon'ble High Court, the affidavit dated 03.11.2020 (Annexure P-5 with the petition) was verified from the complainant/prosecutrix (name withheld) on 20.12.2020. She has stated that the above mentioned FIR was got registered by her against Arjun Bakshi i.e. the petitioner at P.S.Women Manesar, Gurugram. She further stated that she has executed the affidavit to withdraw the case without any fear or pressure and that she has no objection in case Arjun Bakshi is granted the concession of bail. The true translation of the statement of the complainant/prosecutrix

20.12.2020 (along with vernacular) is attached herewith as Annexure R-1 for kind perusal of this Hon'ble High Court.

5. That as per orders dated 25.11.2020 passed by this Hon'ble High Court, the affidavit of the prosecutrix/complainant been verified as mentioned above.

6. That no other case has been found to be registered against the petitioner, as per available record.”

Not only the verification but even the counsel for the complainant, who has appeared in the Court has instructions to state that the prosecutrix stands by her affidavit and she does not have any objection, in case, the petitioner is released on bail. Still further, he submits that as deposed in the statement/affidavit, the complainant unequivocally withdraws all the allegations against the petitioner which had been levelled as an outcome of some misunderstanding.

Furthermore, no material has been brought on the record by the prosecution, nor referred to during the course of hearing to show that the accused or his family were in a position to influence the prosecutrix or force her to enter into any settlement or execute the affidavit. This Court has, therefore, formed an opinion that the affidavit, Annexure P-5 has been given by her of her own volition. Still further, the prosecutrix had appeared before the learned Additional Sessions Judge, Gurugram and admitted in open Court that she had given an affidavit wherein she had given her 'No Objection' to the grant of bail and had also stated that the FIR had been lodged by her because of some misunderstanding which now stands resolved. Upon a specific query by the Court, as to whether the petitioner had promised to marry her, she gave an answer in 'negative'.

Besides the above affidavit, there are other factors also which deserve to be noticed. The prosecutrix is a mature and financially independent working girl of 23 years of age. She is an IT Professional working in a reputed IT Company where she met the petitioner. She became friendly with him, entered into a relationship and she even started living with him under one roof of her own free will which is apparent from the rent agreement which has been duly signed by both. The rent agreement shows that the prosecutrix has described herself as unmarried girl. The FIR was lodged by her after they lived together for a period of more than one year and the relationship, which was more than a casual one, could not mature into matrimonial alliance. Insofar as transfer of salary of the prosecutrix to the account of the petitioner is concerned, there are no allegations of the petitioner having misused her bank cheques or internet banking password.

Keeping in view the totality of above mentioned facts and circumstances, this Court is of the view that the probability of the relationship between the two being consensus cannot be ruled out.

In view of the above, further incarceration of the petitioner would not serve any purpose and he deserves to be enlarged on bail. Without commenting on the merits of the case, the petition is allowed. The petitioner is ordered to be released on bail on his furnishing bail/surety bonds to the satisfaction of the concerned Duty Magistrate/trial Court.

It is clarified that nothing said hereinabove shall be construed to be an expression on the merits of the case.

(SUVIR SEHGAL)
JUDGE

January 25, 2021

savita

Whether Speaking/Reasoned

Yes

Whether Reportable

Yes