

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

**CRM-5621-2021 in/and
CRM-M-41314-2020 (O&M)
Date of Decision: 09.03.2021**

Himanshu Nagpal

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present: Mr. Vinod Ghai, Senior Advocate, with
Mr. G.C.Shahpuri and Ms. Kanika Ahuja, Advocates,
for the petitioner.

Ms. Sheenu Sura, DAG, Haryana,
assisted by SI Vishwajeet Singh.

GURVINDER SINGH GILL, J. (Oral)

CRM-5621-2021

In view of the reasons mentioned in the application, the same is allowed and the documents are taken on record subject to all just exceptions.

CRM-M-41314-2020

1. The petitioner has approached this Court seeking grant of regular bail in respect of a case registered against him vide FIR No.698 dated 27.08.2020 at Police Station City Jagadhri, District Yamuna Nagar, under Sections 323/376(2)(N)/494/506 IPC.
2. The FIR in question was lodged at the instance of prosecutrix, wherein it is alleged that she is a major and is a Muslim by religion and is a graduate. It is alleged that Himanshu Nagpal (petitioner)

contacted her and procured her phone number and started talking to her. The conversation between them reached to the extent that he persuaded the prosecutrix for marriage while representing that he would take care of her. However, the complainant/prosecutrix refused the proposal of marriage. Thereafter, the accused is alleged to have made the complainant emotional and ultimately persuaded her for marriage and started giving expensive gifts. It is further alleged that the accused by making her emotional also established physical relations with her prior to marriage. On 09.12.2019, the accused took her to Arya Samaj Mandir, Sector-9, Panchkula and got the marriage solemnized, but he retained all the documents with him. It is alleged that the accused in this manner had been exploiting her physically for about 9 months. Later, the complainant/prosecutrix came to know that in fact the petitioner/accused was already married and was having two children. When the complainant/prosecutrix confronted the accused/petitioner and his parents, they flatly refused to accept her as petitioner's wife.

3. Learned senior counsel appearing on behalf of the petitioner has submitted that the prosecutrix is a major and a fully mature person and is a graduate and had voluntarily entered into a relationship with the petitioner. It has further been submitted that even in the statement of the prosecutrix recorded in terms of Section 164 Cr.P.C., she has categorically stated that she had become good friend with petitioner during the year 2018-19 and they also developed physical relations and although she had talked to her

parents for her marriage, but her parents did not agree for the same.

Learned senior counsel has submitted that the prosecutrix, right from very beginning, had been a consenting party. It has further been submitted that although there are also allegations to the effect that the petitioner was already married when he solemnized marriage with the prosecutrix, but in any case offence under Section 494 IPC is a bailable offence and as such the petitioner deserves the concession of bail.

4. Learned State counsel while opposing the petition has submitted that since it is a case where the consent had apparently been obtained under some kind of deception and in fact the petitioner had concealed the fact that he was already married, no case for grant of bail is made out. Learned State counsel in this regard has also drawn the attention of this Court to the concluding portion of the statement of the victim recorded in terms of Section 164 Cr.P.C., wherein she has stated that the petitioner had also used force for establishing physical relations with her. Learned State counsel has, however, informed that the petitioner has been behind bars since the last about 6 ½ months and that he is not involved in any other case.

5. I have considered rival submissions addressed before this Court.
6. Having regard to the facts and circumstances, it will certainly be debatable as to whether it is a case of consensual physical relations or a case of consent by deception. It is not in dispute that the prosecutrix is a mature lady and has been having physical relations with the petitioner for a long time. In any case, the petitioner as on

date has been behind bars since the last about 6 ½ months and is not even stated to be involved in any other case. The conclusion of trial is likely to consume time, as only 1 PW out of the cited 12 PWs has been examined so far. As such, further detention of the petitioner will not serve any useful purpose. The petition, as such, is accepted and the petitioner is ordered to be released on regular bail on their furnishing bail bonds/surety bonds to the satisfaction of learned trial Court/Chief Judicial Magistrate/Duty Magistrate concerned.

7. It is, however, made clear that none of the observations made above shall be taken to be an expression on merits of the main case.

09.03.2021
Vimal

(GURVINDER SINGH GILL)
JUDGE

Whether speaking/reasoned: **Yes/No**
Whether reportable: **Yes/No**