

104

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-10901-2022

Date of Decision: March 15, 2022

Hardeep Singh @ Hardeep Sharma

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR.JUSTICE RAJESH BHARDWAJ

Present: Mr.Gurvinder Singh Sidhu, Advocate
for the petitioner.

.....

RAJESH BHARDWAJ, J.(ORAL)

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

Instant petition has been filed under Section 438 Cr.P.C. praying for grant of anticipatory bail to the petitioner in case FIR No.23, dated 12.02.2022, under Section 377 IPC, registered at Police Station Moonak, District Sangrur.

As per the allegations, the marriage in question took place on 05.02.2022. The complainant/prosecutrix has lodged the present FIR alleging therein that her husband, i.e. the petitioner, during their wedding night, i.e. 07.02.2022 forced her, when she was on her menstrual period, to do oral sex with him and thereafter he committed unnatural sex with her. Having no other alternative, she had to desert the matrimonial home. She was admitted in AP Jain Civil Hospital, Rajpura. The request was made to

Apprehending his arrest, the petitioner approached the learned Additional Sessions Judge, Sangrur for grant of anticipatory bail, who after hearing the parties, declined the same vide order dated 02.03.2022. Aggrieved by the same, the petitioner approached this Court by way of present petition.

Learned counsel for the petitioner has contended that the petitioner has been falsely implicated in this case and within a short span of marriage, the false and frivolous allegations are levelled against him after the wife deserted the matrimonial home. He contends that in view of provisions of Section 375 Exception 2 IPC, which reads as under, the alleged act does not amount to rape:

“Sexual intercourse or sexual acts by a man with his own wife not being under fifteen years of age, is not rape”.

Learned counsel further submits that as the alleged offence is not attracted, the petitioner deserves the concession of anticipatory bail.

Heard.

It is a case where the marriage has taken place recently, i.e. on 05.02.2022. The allegations levelled by the complainant/wife are not on account of the harassment and cruelty caused to her on account of demand of dowry, however, the same are on account of unnatural sex with the complainant when she was passing through the period of menstruation. Investigation is at threshold and at this stage the Court cannot go into the defence taken by the accused. The allegations prima facie does not warrant this Court to invoke the extraordinary jurisdiction under Section 438 Cr.P.C. For exercising the same, the factors, to be taken into consideration, are viz: the gravity of offence, the probability of the petitioner fleeing from justice,

probability of tampering with the ongoing investigation etc.. The Court is to strike the balance between the personal liberty and the overall interest of the society, while considering the plea for anticipatory bail. However, the interest of the society always prevail upon the right of personal liberty.

From the facts and circumstances of the present case, the Court is convinced that the petitioner does not qualify for grant of anticipatory bail.

Hence, the petition being devoid of any merit, is hereby dismissed.

March 15, 2022
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(RAJESH BHARDWAJ)
JUDGE

- 1. Whether speaking/reasoned ?**
- 2. Whether reportable ?**

Yes/No
Yes/No