

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

CRM-M-26830-2021(O&M)
Date of Decision: January 28, 2022

Nirbhay Singh

..... Petitioner

Versus

UT Chandigarh

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Satyaveer Singh, Advocate, for the petitioner.
Ms. Vasundhara Dalal Anand, Addl. PP, UT Chandigarh.
Mr. Aditya Verma, Advocate, for the complainant.

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.

Prayer in the present petition is for grant of regular bail to the petitioner in a case FIR No.210 dated 12.11.2020, registered under Sections 323, 506, 504, 376, 498-A, 420 IPC, at Police Station, Sector 36, Chandigarh.

As per the factual matrix of the case, the present FIR was registered by the complainant alleging that she wanted to go to Canada for her higher education and wanted to get admission in Columbia University for Ph.D. A lady, namely, Lekha Handa introduced the complainant with her friend Nirbhay Singh Rana, i.e. the petitioner, on the promise that Nirbhay Singh would help her to go to Canada. In this way, she came in contact with the petitioner Nirbhay Singh, who demanded money to process the Visa file and promised to introduce her with some person, and also asked her to deposit money in his bank account. Resultantly, she

deposited lakhs of rupees in the bank accounts of his friend Kabir Arora, Nirbhay's aunt Shashi, Shashi's son Uday Pratap Singh Rana, Nirbhay's uncle Rajiv Singh Rana and Nirbhay's mother Sudha Rani. However, finding no response, when the complainant demanded money back, Nirbhay Singh started making excuses. On her persistent demand, the petitioner threatened her with dire consequences. Thereafter, Nirbhay Singh informed her that her file for spouse Visa would be processed in due course and he came to India on 10.04.2019 and asked her to perform court marriage with him. Later on, several times he established physical relations with the complainant. It was further alleged that as the petitioner asked her that court marriage is the only option for going to Canada, she solemnized marriage with the petitioner on 17.04.2019. After marriage, Nirbhay Singh went back to Canada on 14.05.2019 and asked her to apply for Visa, the expenditures of which were incurred by the complainant. However, later on the petitioner blocked her number and stopped talking to her. The relatives of the petitioner started harassing the complainant. On 25.05.2020, the petitioner came back to India and again the complainant deposited an amount of about Rs.18/19 lakhs in the bank account of Nirbhay's mother Sudha Rani, Nirbhay's aunt Shashi, Nirbhay's cousin Uday Pratap Singh Rana and Nirbhay's friend Kabir Arora. Thereafter, she came back to her parents based in BHEL in the month of May, 2020. Request was made to take legal action against the accused and provide justice to her. Thereafter, the investigation commenced and the petitioner was arrested on 05.06.2020. The petitioner approached the learned Additional Sessions Judge, Chandigarh for grant of bail under Section 439 Cr.P.C., who after hearing the parties declined the same vide his order dated 21.06.2021. Aggrieved by the same, the petitioner has approached this court by way of the present petition praying for grant of regular

bail.

It has been vehemently contended by learned counsel for the petitioner that the present case is a sheer abuse of process of the court where the petitioner has been falsely implicated in a clandestine manner by the complainant. He contends that as per the allegations in the FIR there are total five accused. A thorough investigation was carried out and finally the police presented the challan only qua two of the accused i.e. the petitioner and co-accused Uday Pratap Singh – cousin of the petitioner. So far as rest of the three accused are concerned, they were kept in column no.2. He contends that co-accused Uday Pratap Singh has already been granted anticipatory bail by this Court vide order dated 19.07.2021. It has been asserted that the complainant is changing her statement at every stage. He has drawn the attention of the Court to the earlier complaint made by the complainant in the Police Station BHEL, Ranipur, Haridwar (Uttarakhand). He submits that a bare perusal of the detailed complaint filed would show that there are no allegations of rape against the petitioner prior to the marriage, whereas in the present FIR, after due deliberations, the allegation of rape prior to the marriage was clandestinely incorporated. He contends that the Haridwar Police duly investigated the complaint filed by the complainant and found no truth in the allegations made therein. He has submitted that the petitioner and the complainant were duly married and after going to Canada, the petitioner made serious efforts for arranging spouse Visa of the complainant for Canada. However, the same was rejected three times by the concerned authority and this was the crux of the whole case that the complainant nurtured a grudge against the petitioner and lodged the present FIR. He also submits that the matter was finally amicably settled between both the parties and the petition under Section 13-B of the Hindu Marriage Act,

1955 was also filed. As per the compromise arrived at, the petitioner was to pay a total amount of Rs.11 lakhs to the complainant. At the time of first motion statement, he paid an amount of Rs.6 lakhs by way of demand draft, which is duly admitted by the complainant. Thereafter, another demand draft of the balance amount of Rs.5 lakhs was deposited in the family court at Haridwar. However, the complainant for the reasons best known to her backed out of the compromise and lodged the present FIR mischievously. In the petition filed by the complainant under Section 125 Cr.P.C. for grant of maintenance, the marriage between the petitioner and the complainant having been performed on 17.04.2019, has been duly admitted and a maintenance of Rs.2 lakhs per month has been prayed for. He submits that the petitioner approached the court of learned Additional Sessions Judge, Chandigarh for grant of bail, however, the same was illegally declined by the learned Court. He has submitted that the case has been duly investigated, the challan has been presented and the charges have been framed and now the recording of evidence has been commenced before the trial Court. He submits that on many occasions, the complainant intentionally avoided her appearance before the trial court, just to prolong the incarceration of the petitioner. Now the examination-in-chief of the complainant has been recorded where material improvements have been made by the complainant. An application under Section 319 Cr.P.C. has been filed for summoning the remaining three accused to be tried along with the petitioner and co-accused. He has submitted that from overall facts and circumstances of the case, it is evident that the present dispute is nothing but a matrimonial discord between the petitioner and the complainant. He further contends that the complainant has filed the present FIR only to harass the petitioner and ensure his incarceration at any cost. He submits that the petitioner

has an impeccable record and has no criminal antecedents, and deserves to be enlarged on bail.

Learned counsel for the complainant has opposed the submissions made by the learned counsel for the petitioner tooth and nail. He submits that there are no material improvements, as alleged by learned counsel for the petitioner. The complainant since beginning has alleged the same allegations against the petitioner and the co-accused. He has submitted that the petitioner has blackmailed the complainant and, thus, compelled her to part with a heavy amount. He submits that the compromise arrived at between the parties was under coercion and the money paid by the petitioner is not on account of the compromise arrived at, but it was the money which was paid by the complainant only to the petitioner for getting her study visa for Canada. He has gone to the extent of arguing that neither it was a love marriage nor arranged marriage but it was a contractual marriage between the petitioner and the complainant. He submits that now another FIR No.55, dated 22.01.2022, under Section 509 IPC has been registered against the petitioner and co-accused Uday Pratap Singh, at Police Station Ranipur, Haridwar (Uttarakhand). He submits that examination-in-chief of the complainant has been recorded by the trial Court and an application under Section 319 Cr.P.C. has been filed for summoning the co-accused who were kept in column No.2. He has contended that in overall facts and circumstances of the case, no case for grant of bail to the petitioner is made out.

Learned counsel for the UT, Chandigarh, submits that the statement of the complainant is being recorded by the trial Court. She affirms that an application under Section 319 Cr.P.C. has been filed for summoning the co-accused. She has submitted that in all there are 27 prosecution witnesses out of

which examination-in-chief of the complainant has been recorded so far.

I have heard the arguments raised by learned counsel for the parties and perused the record.

It is evident from the facts of the case that the complainant and the petitioner knew each other and thereafter they got married on 17.04.2019. The rift widened between both of them and a complaint was made by the complainant in the Police Station at Haridwar. However, the same was transferred to the present Police Station, wherein the present FIR was registered. The complainant has filed a petition under Section 125 Cr.P.C. claiming maintenance from the petitioner. After investigation, the investigating agency filed challan qua the petitioner and co-accused Uday Pratap Singh, whereas rest of the three accused were kept in column No.2. Co-accused Uday Pratap Singh was granted anticipatory bail by this Court vide order dated 19.07.2021. The petitioner has approached the court of learned Additional Sessions Judge, Chandigarh but his bail was rejected by the learned Court vide its order dated 21.06.2021 when the present case was under investigation. However, the investigating agency completed the investigation and the challan was prepared on 26.07.2021, which is evident from the record Annexure P-11. No doubt, now another FIR as contended by learned counsel for the petitioner is also registered against the petitioner but the same has been registered after lodging of the present FIR, i.e. on 22.01.2022. In the overall attending facts and circumstances of the case, this court finds that the petitioner is behind bars since 05.06.2020 and examination-in-chief of the complainant has also been recorded. Both the complainant and the petitioner are very well educated and are of the age of majority. Admittedly, they are duly married and their matrimonial life appears to have ran in rough weather subsequently. For the consideration of

the bail, as laid down by the Hon'ble Supreme Court in Anil Kumar Yadav vs. State (NCT of Delhi), (2018) 12 SCC 129, the factors like (i) nature of seriousness of the offence; (ii) character of the evidence and circumstances which are peculiar to the accused; and (iii) likelihood of the accused fleeing from justice; (iv) the impact that his release may make on the prosecution witnesses, its impact on the society; and (v) likelihood of his tampering, are relevant. Applying the parameters laid down to the case in hand, this Court finds that the petitioner qualifies to be enlarged on bail. The veracity of the allegations would be evaluated by the trial Court only after conclusion of the evidence led by both the parties. The trial of the case will take sufficiently long time and no useful purpose will be served by keeping the petitioner in custody for such a long time. Accordingly, the present petition is allowed and the petitioner is ordered to be released on bail to the satisfaction of the concerned trial Court/Duty Magistrate. Nothing said herein shall be treated as an expression of opinion on the merits of the case.

However, the petitioner is directed to surrender his Passport before the trial Court/Duty Magistrate at the time of furnishing bail/surety bonds to be kept by it till the decision of the case. Trial Court will be free to consider the request for release of Passport after decision of the case.

(RAJESH BHARDWAJ)
JUDGE

January 28, 2022
sharmila

Whether Speaking/Reasoned : Yes/No
Whether Reportable : Yes/No