

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

CRM-M-27178-2022

Date of Decision: 22.08.2022

MITHLESH KANAUIYA

... PETITIONER

VS.

STATE OF HARYANA AND ANOTHER .. RESPONDENTS

CORAM: HON'BLE MR. JUSTICE VIVEK PURI

Present : Mr. Aanand Kumar Maurya, Advocate, for the petitioner.

Ms. Trishanjali Sharma, Deputy Advocate General, Haryana.

VIVEK PURI, J.(ORAL)

On 22.06.2022, the following order was passed:-

“The instant petition has been filed under Section 438 CrPC for grant of anticipatory bail to the petitioner in case bearing FIR No.249 dated 01.05.2022 under Section 376 and 506 of the IPC registered at Police Station Pinjore, District Panchkula.

Learned counsel for the petitioner contends that the FIR has been registered at the instance of the prosecutrix who made a complaint to the effect that she was residing with her mother at village Madhawala, Tehsil Kalka, District Panchkula and was working in Mister Lab Factory at Baddi for the last 03 years. She developed intimacy with the petitioner Mithlesh Kumar who was a co-worker in the factory and that in the year 2020, the petitioner came to the house of the mother of the prosecutrix and entered into a physical relationship on the pretext that he shall solemnize marriage with her. It is contended that over a period of last 03 years, the petitioner committed sexual intercourse with the prosecutrix in the house of her mother on a compromise and assurance to marry her. It is pointed out that on 25.04.2022, when the prosecutrix asked the petitioner to enter into a matrimonial alliance with her, he refused whereupon the complaint in question was submitted resulting in registration of the instance case.

Learned counsel for the petitioner inter alia contends that the false allegations have been levelled in order to pressurize the petitioner. As a matter of fact, the relationship amongst the parties was consensual. The relationship alleged by the complainant have taken place in the house of the complainant herself and as such there was no occasion for the petitioner to have forcibly committed any sexual assault on her. It is contended that the prosecutrix was always aware of the fact that the petitioner is already married and has two children and yet entered into a relationship with him out of her own accord and after stating to the petitioner that she has no problem with the fact that the petitioner is married and that she can still live with him. It is contended that after some period on this continued relationship between the prosecutrix and the petitioner, the family of the prosecutrix stated pressurizing the petitioner for solemnization of marriage. He contends that the prosecutrix is aged 27 years and was earlier married in March 2019 but was unfortunately widowed. As a result of the continued pressure, the petitioner solemnized marriage with the prosecutrix at Barotiwala Shiv Mandir on 25.02.2022 in the presence of the family members

of the prosecutrix including her mother Fatima, her brother Nisar Ali, younger sister Ashu and brother-in-law Hasan Ali. Reliance is placed on the photographs demonstrating performance of the said marriage. He contends that after solemnization of the marriage the petitioner as well as the prosecutrix along with members of her family went to the police chowki Barotiwala, Solan to claim police protection. They were however directed to approach the Court for seeking protection at which they had gone to the Court at Nalagarh Sub-Division, however, the appropriate order was not passed. He further contends that the aforesaid sequence of events clearly shows that the relationship amongst the parties was consensual and the prosecutrix was fully aware of the circumstances amongst the parties and the fact that there was no false assurance given by the petitioner since the factum of solemnization of marriage in the month of February 2022 establishes that the assurance, if any, made by the petitioner stands fulfilled as well. He contends that that no recovery is to be effected from the petitioner and that he is ready and willing to join the investigation as and when so required by the investigating agency.

Notice of motion.

Mr. Kanwar Sanjiv Kumar, AAG Haryana accepts notice on behalf of the respondent-State.

In the meantime, the petitioner is directed to join investigation as and when so required by the Investigating Agency. In the event of petitioner joining investigation, he shall be admitted to interim bail by the arresting officer/investigating officer on furnishing of bail bonds by him to the satisfaction of the arresting officer/investigating officer. The petitioner shall also abide by the conditions as specified under Section 438(2) Cr.P.C.

To come up for further consideration on 22.08.2022.”

Learned counsel for the petitioner contends that in pursuance of interim directions issued by this Court, the petitioner has joined the investigation.

Learned State counsel, on instructions from ASI Anita has also submitted that the petitioner has joined the investigation but it has been stated that the mobile phone of the petitioner has been sent to Forensic Science Laboratory which contains some obscene videos.

It has been not been disputed that there is no such allegation that any obscene video was prepared or made viral in the FIR. Furthermore, the videos are stated to have been submitted by the petitioner himself before the Court of Session alongwith his bail application. No recovery is to be effected from the petitioner. The petitioner has joined the investigation in pursuance of interim directions issued by this Court.

In these set of circumstances, sufficient grounds are made out to extend the concession of pre-arrest bail to the petitioner. Accordingly, order dated 22.06.2022, vide which the petitioner has been granted interim bail, is made absolute.

Petition is allowed.

22.08.2022
smriti

(VIVEK PURI)
JUDGE

Whether speaking/reasoned
Whether Reportable

: Yes/No
: Yes/No