

In the High Court for the States of Punjab and Haryana at
Chandigarh

CRM-M-35393-2022 (O&M)

Reserved on : 31.08.2022

Date of Decision: September 05, 2022

Sagar Kapoor

... Petitioner

Versus

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE VIVEK PURI

Present: Mr. Anmol Rattan Sidhu, Senior Advocate with
Mr. Pratham Sethi, Advocate,
for the petitioner.

Ms. Trishanjali Sharma, DAG, Haryana.

Mr. Namit Khurana, Advocate,
for the complainant.

Vivek Puri, J.

The petitioner is seeking anticipatory bail in the case bearing FIR No. 0552, dated 23.07.2022, under Section 376 of the Indian Penal Code (for short 'IPC'), registered at Police Station Civil Lines Karnal, District Karnal.

Briefly, the FIR has been registered on the allegations that roka ceremony of the petitioner was held on 30.01.2022 with the petitioner and the date of marriage was fixed as 06.12.2022 with the consent of the family. On 21.02.2022, the petitioner met the prosecutrix and asked her to form physical relationship, but she refused to do so.

The petitioner again met her on 27.05.2022 in Delhi and again insisted for physical relationship. On 18.06.2022, the prosecutrix was taken by the petitioner to Leela Grand Hotel, Karnal, on the pretext that he was tired and wants to take rest. The prosecutrix was taken to a room and petitioner asked her for physical relations, but she refused to do so. Despite that the petitioner entered into physical relationship with the prosecutrix and also made her videos. Subsequently, on 17.07.2022, the mother of the petitioner informed the mother-in-law of the sister of the prosecutrix that the petitioner is quarrelling for the last two months at home as he does not want to solemnize marriage with the prosecutrix.

Learned senior counsel for the petitioner contends that there is no dispute with regard to the fact that the petitioner was engaged with the prosecutrix and the date of marriage was fixed as 06.12.2022. Furthermore, the necessary bookings for the marriage ceremonies were done by the petitioner and his family. The family of the petitioner came to know that the prosecutrix was having love affairs with other male friends and accordingly, marriage was called off on 02.07.2022. Subsequent to the engagement, the petitioner and the prosecutrix had voluntarily visited the hotel and their names have been reflected as guest in the records of the hotel. The physical relations were developed

with the consent of the prosecutrix. Even subsequent to the occurrence, the whatsapp messages were exchanged which indicate that it was a consensual relationship. By placing reliance upon a decision of Hon'ble Supreme Court rendered in ***Maheshwar Tigga vs. State of Jharkhand, (2020) 10 SCC 108***, it has been argued that the relationship was consensual in nature, but the marriage could not fructify and consequently, no case under Section 376 IPC is made out.

Learned State counsel and the learned counsel for the complainant have opposed the bail application on the score that serious allegations of commission of rape have been leveled against the petitioner despite the refusal on the part of the prosecutrix. The petitioner had also prepared the video while indulging in physical relationship. Subsequent chats between the petitioner and the brother-in-law of the prosecutrix are indicative of the fact that the petitioner is not disputing the fact of entering into physical relationship and preparing the video. Furthermore, the audio recordings have also been presented by the complainant party to the investigating agency and the voice sample of the petitioner is required for proper investigation of the case. Even in her statement under Section 164 of the Code of Criminal Procedure, the prosecutrix has reiterated her allegations.

There is no dispute between the parties to the effect that the petitioner was engaged with the prosecutrix and the date of marriage was fixed for 06.12.2022. The petitioner has sought to put forth a case to the effect that the marriage was called off on 02.07.2022 as his family had discovered that the prosecutrix was having love affair with other male friends. As per the version of the prosecution, on 18.06.2022, the petitioner took the prosecutrix to a hotel, where physical relations were developed despite her refusal. Even at earlier instance also, the petitioner had been insisting for such relationship, but the prosecutrix had been refusing to do so. It is a categorical case of the prosecution that there was refusal on the part of the prosecutrix and despite that the petitioner entered into sexual relationship. The whatsapp messages sought to be relied upon by the petitioner are subsequent to the occurrence. There is lack of material to indicate that as on 18.06.2022, the prosecutrix had consented for any such relationship. The whatsapp chat at a subsequent stage may have been exchanged on the score that the matrimonial alliance was existing at that point of time. However, it does not indicate that the act was committed by the petitioner with the consent of the prosecutrix. It is not borne out that at any point of time, the prosecutrix has voluntarily consented for the sexual intercourse and it is a case of consensual relationship. In

the event, the parties were engaged and were meeting each other, it cannot give any right or liberty to the proposed bridegroom to sexually exploit the fiancée without her consent. The petitioner cannot get any leverage to physically exploit the fiancée against the consent during the period intervening the engagement and the marriage. The version in the FIR is also indicative of the fact that as per information derived from the mother of the petitioner, there was reluctance on the part of the petitioner to solemnize marriage even at the point of time when physical relationship was developed. There is lack of material to indicate that there was genuine intention on the part of the petitioner to solemnize marriage and the prosecutrix was the consenting party at the relevant time. In the peculiar circumstances of the case, it is not made out that it was a case of consensual relationship.

The ratio of the decision rendered in ***Maheshwar Tigga*** (supra) is distinguishable from the facts of the case. In the aforesaid case, the Hon'ble Supreme Court was dealing with an appeal against conviction. Though the parties were engaged, but the marriage could not be fructify because they were from difference religious beliefs. The engagement ceremony was held in the solemn belief that the societal obstacles would be overcome, but unfortunately the differences arose as to whether the marriage was to be

solemnized in the church or in a temple and ultimately failed. It was held that the prosecutrix was conscious of the obstacles and she continued to establish physical relationship. In the said case, there was initial consent on the part of the prosecutrix to enter into physical relationship, but the marriage could not fructify on account of different religious beliefs. Besides there was delay of about four years in lodging of the FIR and certain circumstances were not put to the accused in his statement under Section 313 Cr.P.c. and were excluded from consideration. However, in the instant case, there is a categorical statement of the prosecutrix that the petitioner entered into physical relationship with her, despite her reluctance, refusal and denial. The passive submission on the part of the prosecutrix to the act, cannot be construed as a circumstance to hold that it was a case of consensual relationship.

In these set of circumstances and keeping in view the gravity of the allegations, no extra ordinary circumstances are made out to grant the pre-arrest bail to the petitioner.

Present petition is, accordingly, dismissed.

September 05, 2022
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(Vivek Puri)
Judge

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