

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

(102)

CRM-M-42194-2021

Date of Decision: 15.2.2022

Santosh Kumari @ Shivani

--Petitioner

Versus

State of Haryana & another

--Respondents

CORAM:- HON'BLE MR. JUSTICE RAJESH BHARDWAJ.

Present:- Mr. Prateek Rathee, 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.

The present petition has been filed under Section 439(2) Cr.P.C praying for cancellation of anticipatory bail granted to respondent no.2 by learned Addl. Sessions Judge, (Fast Track Court), Gurugram vide order dated 19.7.2021 (Annexure P-4) in case FIR No.97 dated 25.5.2021 registered under Sections 376(2)(n), 323, 406, 506 IPC at Police Station, Sector 65, Gurugram.

As per facts of the case, the present FIR was registered by the petitioner/prosecutrix. The sum and substance of the allegations in the FIR is that the petitioner/prosecutrix and the respondent both are already married. They came in contact with each other through Facebook. Thereafter, respondent no.2 took the complainant to Jharoda Officers Mess and on reaching there he performed sexual intercourse with her without her consent. He promised her to marry. He kept maintaining constant physical relationship with the prosecutrix. He had promised her that he would divorce his wife and thereafter he would marry her, however, he did not

divorce his wife. It was also alleged that she transferred Rs.2 lakh in the bank account of the respondent Sanjay Kumar. She alleged that respondent Sanjay Kumar misused her on the pretext of marriage and defrauded her for Rs.2 lakh. A request was made to take legal action against the culprit.

The respondent no.2 approached learned Addl. Sessions Judge, Gurugram for grant of bail. After hearing the parties, learned Addl. Sessions Judge, Gurugram first granted the interim bail vide order dated 5.7.2021 and thereafter made the same absolute vide order dated 19.7.2021.

Learned counsel for the petitioner-complainant vehemently contends that the learned Addl. Sessions Judge, Gurugram has fallen in error in granting the anticipatory bail to respondent no.2. He submits that there are categoric allegations of rape by respondent no.2 with the prosecutrix. It has been contended that learned Addl. Sessions Judge, Gurugram has failed to appreciate the material on record i.e. the allegations in the FIR that the respondent no.2 is an officer in CRPF and by falsely promising the prosecutrix to marry her he established physical relationship with her. He further submits that respondent no.2 has defrauded the petitioner and the physical relationship established with the petitioner amounts to rape which learned Addl. Sessions Judge has failed to appreciate and thus the bail granted to respondent no.2 deserves to be recalled. Counsel has relied upon the judicial precedents in case of ***Abdul Basit alias Raju and others vs. Mohd. Abdul Kadir Chaudhary & another (2014) 10 SCC 754*** and ***Prashant Singh Rajput Vs. The State of Madhya Pradesh and another, Criminal Appeal No.1202 of 2021 arising out of SLP (Crl) No.5786 of 2021.***

I have heard learned counsel for the petitioner at length and have gone through the records made available carefully.

It is an accepted proposition of law that the law governing grant of bail and that of the cancellation of same is entirely different. Once the bail is granted, recalling of the same is not a matter of routine. However, in case the petitioner is found to be misusing the concession of bail or violating the terms and conditions or the bail has been granted contrary to the law, the court can consider recalling of the same.

Admittedly, both petitioner and respondent no.2 are already married and they were very much aware of the background of each other. The allegations by the prosecutrix against respondent no.2 are precise i.e. establishing physical relationship with her on the promise of marriage. Respondent no.2 assured the petitioner to divorce his wife, however, he never did that and established physical relationship with the prosecutrix by defrauding her as her consent was taken by cheating. The learned Addl. Sessions Judge, Gurugram has appreciated all the facts and circumstances argued by learned counsel for the petitioner. There is nothing on record to suggest that respondent no.2 has violated the terms and conditions of the order granting him bail or misused the concession of bail. There is no dispute regarding the judicial precedents relied upon by counsel for the petitioner, however, in all its humility they are distinguishable in the facts and circumstances of the present case. Their lordships in ***Abdul Basit alias Raju's*** case (supra) had held that the power of the court to review bail order is on the ground of it being illegal or contrary to law. Learned counsel for the petitioner has failed to point out any illegality in the impugned order. Thereafter, in case of ***Pramod Suryabhan Pawar Vs. The State of***

Maharashtra and others (2019) 9 SCC 608, it has been held as under:-

“To summarise the legal position that emerges from the above cases, the “consent” of a woman with respect to Section 375 must involve an active and reasoned deliberation towards the proposed act. To establish whether the 'consent' was vitiated by a 'misconception of fact' arising out of a promise to marry, to propositions must be established. The promise of marriage must have been a false promise, given in bad faith and with no intention of being adhered to at the time it was given. The false promise itself must be immediate relevance, or bear a direct nexus to the woman's decision to engage in the sexual act.”

Hence it has been held that simply establishing the physical relationship on the promise of marriage would not attract the offence under Section 376 I.P.C as there is no misconception of fact under Section 90 I.P.C.

In the overall facts and circumstances of the case, I find no illegality in the impugned order passed by learned Addl. Sessions Judge, Gurugram and hence the petition being devoid of any merit, is dismissed.

(RAJESH BHARDWAJ)
JUDGE

15.2.2022

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Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No