

203

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-42973-2021

Date of Decision: February 11, 2022

Lakhwinder Singh

.....Petitioner

Versus

State of Punjab and another

.....Respondents

CORAM: HON'BLE MR.JUSTICE RAJESH BHARDWAJ

Present: Mr.Kulbhushan Raheja, Advocate
for the petitioner.

Mr.Rakeshinder Singh Sidhu, AAG, Punjab.

Mr.Jasjeet Singh, Advocate
for respondent No.2.

.....

RAJESH BHARDWAJ, J.

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.82, dated 13.08.2021, under Sections 341, 366, 376, 120-B and (Section 494 IPC added lateron), registered at Police Station Lakho Ke Behram, District Ferozepur.

As per the factual matrix of the case, the present FIR was filed by the prosecutrix (name concealed) on the basis of various allegations.

Sum and substance of the allegations made in the FIR are that the

prosecutrix was allured by the petitioner by projecting himself to be a bachelor and working as an Army Officer. He started passing on various messages to the prosecutrix in order to win her confidence and started exploiting her. He forged the papers regarding her marriage with him and showed the relationship between him and the complainant as husband and wife. Thereafter when the truth revealed he snatched the mobile of the prosecutrix and started blackmailing her. By extending threats he took her to one P.G. in Chandigarh. The complainant became pregnant. To the utter shock of the prosecutrix it came to her notice that the petitioner-accused was not unmarried, rather this was his third marriage. He established physical relationship with the prosecutrix without her consent by coercion. He kept confined her. She was taken by him to village Kamale Wale where his entire family members also conspired with the petitioner. It came to the knowledge of the prosecutrix that the petitioner-accused concealed everything from her, i.e. his name, profession, and marital status and also blackmailed her. Having no alternative, the prosecutrix approached the police and lodged the present FIR for taking legal action against all the accused.

The police swung into action and started investigation in the FIR. The petitioner approached the learned Additional Sessions Judge, Fast Track Court, Ferozepur, for grant of anticipatory bail. After hearing the parties, learned Additional Sessions Judge, Ferozepur, declined the same vide order dated 16.09.2021. Aggrieved by the same, the petitioner has approached this Court.

Learned counsel for the petitioner has vehemently contended

married and they both remained at number of places and thereafter they approached before this Court seeking protection as well. He submits that the couple started living together and thereafter, as per the medical of the prosecutrix, Annexure P-3, she was found pregnant. He submits that thereafter, the prosecutrix was forcibly taken away from the custody of the petitioner and the present FIR was lodged on the pressure of her family members. He has relied upon judicial precedent of Hon'ble Apex Court in **Sonu @ Subhash Kumar vs State of Uttar Pradesh and another** 2021(2) RCR (Criminal) 269, judgment of Allahabad High Court in **Vidhan Vyas vs State of U.P.** passed in Criminal Miscellaneous Anticipatory Bail Application No.892 of 2021 decided on 13.05.2021 and on the interim order passed by this Court in **Satinder Singh vs State of Punjab** passed in CRM-M-50679-2021 on 03.12.2021 and submits that as it was a consensual relationship, so no offence under Section 376 IPC is made out.

However, learned counsel for the complainant has vehemently opposed the submissions made by learned counsel for the petitioner and submitted that petitioner is highly clever person and this is not his first marriage, rather this is his 3rd marriage with the prosecutrix. He submits that the fact of earlier marriages was totally concealed by the petitioner and the prosecutrix was kept in dark. He further submits that the petitioner is father of one son as well from his second wife. He submits that from the bare reading of the allegations in the FIR, it is evident that the petitioner has cheated the prosecutrix by concealing all the facts and he allured her by projecting himself to be a bachelor and blackmailing her. He submits that in view of the facts and circumstances of the case, the petitioner is not

same be dismissed as such.

At the time of issuance of notice, this Court directed the State to file the status report. In pursuance to the same, status report dated 27.10.2021 has been filed. On further directions of this Court, additional affidavit dated 07.12.2021 was also filed by Gobinder Singh, PPS Deputy Superintendent of Police (Sub Division), Guruharsahai, District Ferozepur alongwith copy of statement of Gurjit Kaur, Annexure R-1. On the basis of the status report and additional affidavit, learned State counsel vehemently opposes the submissions made by learned counsel for the petitioner tooth and nail. It is submitted before the Court that the antecedents of the petitioner are highly questionable. During investigation, it has been revealed that the petitioner was earlier married with Channo Bai d/o Satnam Singh with whom he took panchayati divorce on 24.06.2019. Further, the statement of Gurjit Kaur daughter of Balwant Singh was recorded wherein she specifically stated that her marriage was solemnized with petitioner on 19.10.2020 and out of this wedlock, one son was born and the marriage still exists. The present offence has been committed by the petitioner during subsistence of this marriage and thus, this is the third marriage of the petitioner with the prosecutrix. It is submitted that the petitioner had been establishing physical relationship with the prosecutrix in a forcible manner by threatening her. Co-accused has joined investigation, however, petitioner is at large and yet to be arrested. It is submitted that in view of the facts, petitioner does not deserve any leniency and to unearth the truth, his custodial interrogation is necessary.

Heard.

It is evident from the facts of the case and the arguments

advanced by learned counsel for the parties that the matter is under investigation. From the investigation done so far, it has revealed that the petitioner has earlier performed two marriages and from the second marriage there is a child also. The petitioner has not taken the divorce from his earlier marriages and allegedly by concealment of facts and blackmailing the prosecutrix, he had performed the third marriage with her. The prosecutrix had alleged that physical relationship were established without her consent. For the consideration of the anticipatory bail, the statutory factors to be taken into consideration under Section 438(1) Cr.P.C. are like the gravity of offence, the antecedents of the petitioner -accused, his chances of fleeing from justice and probability of tempering with the ongoing investigation. The Hon'ble Apex Court in the Constitutional Bench in **Gurbax Singh Sibbia and others vs. State of Punjab**, (AIR 1980 SC 1632) held that the Court is to strike the balance between the personal liberty of the individual and the overall interest of the society while considering the anticipatory bail. However, the overall interest of the society always prevail upon the right of personal liberty of the individual. Applying the statutory provisions and parameters laid down by the Hon'ble Apex Court in the above-mentioned judicial precedent, this Court is of the opinion that the petitioner does not qualify for exercising its discretion under Section 438 Cr.P.C. in his favour. In all humility there is no dispute regarding the judicial precedent relied upon by learned counsel for the petitioner, however, in the facts and circumstances of the present case, they are distinguishable. A thorough and fair investigation is required to unravel the truth in the allegations and counter-allegations of the parties. In the attending circumstances, the

custodial interrogation of the petitioner would be required.

In view of the overall facts and circumstances of the present case, the present petition being devoid of any merit is, hereby, dismissed

February 11, 2022
meenuss

(RAJESH BHARDWAJ)
JUDGE

- | | | |
|----|-----------------------------|--------|
| 1. | Whether speaking/reasoned ? | Yes/No |
| 2. | Whether reportable ? | Yes/No |