

Sr.No.101+201

2023:PHHC:165618

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

**CRM-50540-2023 in/and
CRM-M-33358-2023(O&M)**
Date of decision: 22.12.2023

Tarsem Singh

.....Petitioner

Versus

State of Haryana and another

.....Respondents

CORAM: Hon'ble Ms. Justice Harpreet Kaur Jeewan

Present: Mr. P.S.Ahluwalia, Advocate
for the petitioner.

Mr. Amrik Singh Narwal, DAG, Haryana.

Mr. Ashit Malik, Advocate
For the complainant.

Harpreet Kaur Jeewan, J.(Oral)

CRM-50540-2023

1. Allowed as prayed for subject to all just exceptions.

True copies of the Bank statements of the petitioner and his family members (Annexures P-11, P-15 and P-16) are taken on record.

CRM-M-33358-2023

2. The present petition has been filed under Section 438 Cr.P.C. for grant of anticipatory bail to the petitioner in FIR No.16 dated 24.04.2023 registered at Police Station PS Women, District Kurukshetra, under Sections 323, 313, 354-A, 376(2)(n), 377, 420 and 506 of the Indian Penal Code, 1860.

3. Learned counsel for the petitioner contends that prosecutrix was married on two earlier occasions and was having two children from her first marriage. Prosecutrix is about 35 years old and she is a well educated lady. She is

running a school in the United States of America(USA). Prosecutrix has taken a conscious and mature decision to enter into a relationship for the purpose of marriage with the petitioner. The petitioner has never backed out from marrying the prosecutrix. As such, the allegations of the prosecutrix are false that the petitioner established a physical relationship with her only on the pretext of marriage. Engagement ceremony has been performed and even till date the petitioner is willing to marry the prosecutrix. The petitioner has also filed a civil suit (Annexure P-3) seeking a decree of injunction directing the prosecutrix to marry him. It is further contended that the actual cause of dispute between the parties pertains to the house where the petitioner and prosecutrix were residing and it was the grievance of the prosecutrix that she had paid an amount of Rs.2 crore to the petitioner pertaining to the said house. There is no question of defrauding the prosecutrix as the house being a joint asset of the petitioner and the prosecutrix. The petitioner had even taken a housing loan for the purpose of purchase of the plot and construction of the same (Annexure P-5 and P-6). The prosecutrix has already filed a civil suit seeking permanent injunction qua the said house categorically considering the fact that she is presently residing in the said house. The prosecutrix has already availed a civil remedy. The petitioner is ready to join the investigation. As such, prayer was made for releasing the petitioner on anticipatory bail. Learned counsel for the petitioner has placed reliance on the decisions in ***Pramod Suryabhan Pawar vs. State of Maharashtra 2019(4) R.C.R.(Criminal) 135; Sonu @ Subhash Kumar vs. State of UP 2021 (2) R.C.R. (Criminal) 269; Mandar Deepak Pawar vs. State of U.P. 2022 (4) R.C.R. (Criminal) 274; and Ansaar Mohammad vs. State of Rajasthan 2022 (3) R.C.R. (Criminal) 917.***

4. Learned State counsel has filed reply by way of affidavit of Ram Dutt, HPS, DSP, Kurukshetra, District Kurukshetra on behalf of the respondent and submits that after the registration of the FIR medical examination of the complainant/victim was got conducted. Her statement under Section 164 Cr.P.C (Annexure R-1) was recorded. During the investigation, the offence under Section 3/4 of the Dowry Prohibition Act, 1961 was deleted and Section 420 IPC was added. The State counsel produced the record pertaining to the termination of pregnancy of the victim. The same is taken on record.

5. During the course of arguments, learned State Counsel has also submitted a medical opinion (Annexure R-2) dated 24.04.2023 alongwith ultrasound examination report dated 03.03.2023, opposing the bail application on the ground that recovery of an amount of Rs.2 crores and other articles is to be effected from the petitioner. As such, a custodial interrogation is required. The petitioner has not joined the investigation till date as the bail application for anticipatory bail was dismissed by the Additional Sessions Judge, Kurukshetra on 21.06.2023 (Annexure P-10).

6. Learned counsel for the complainant also contends that even two FIRs were lodged by the previous wife of the petitioner. However, the learned counsel for the petitioner contends that the said FIRs were subsequently quashed. Learned counsel for the complainant presented in Court the copies of the detailed NEFT and IMPS transactions (page Nos.1 to 88) that are taken on record. It was contended that the total amount of these transactions as per these documents is Rs.34477.13 dollars (Rs.28,27,124.00).

7. I have considered the aforesaid contentions. This case was registered against the present petitioner and three non petitioners with the allegations that the

complainant who is a citizen of the USA was introduced to the petitioner in the year 2019, through her uncle who told him that he is willing to get married, as such the mobile number of the complainant was shared with the petitioner. There were frequent stations the petitioner informed that he is a divorcee and wants to restart his life. Petitioner also stated that he wanted to buy a plot in the name of the complainant and thereafter build a house so that whenever they come to India they can reside in that house happily. However, the petitioner was having prior intention to cheat the complainant and to extort money. The petitioner entered into a physical relationship with the complainant before marriage to torment the complainant on his terms. The complainant transferred around 2 crores into the account of the petitioner during the period after June, 2019. In October, 2019 the complainant came to India and she was made to send the document on the pretext of purchasing the house, the petitioner committed rape with the complainant and also made unnatural relations, thereafter complainant went to America and could not come back for a long time due to Covid Pandemic. On 29.05.2022, the complainant came back to India and the petitioner performed an engagement ceremony with her and also got transferred all the properties in his name, thereafter, the complainant went to the USA. Subsequently, on 04.12.2022 the complainant came back to India, again the petitioner forcibly made a physical relationship with her and assured her that soon they will get married. Thereafter, the petitioner came to know that complainant had become pregnant. Coming to know about the said fact, the petitioner scolded the complainant, kicked her stomach many times and told her that if she wants to have a child, she will have to give Rs.1 crore as dowry and only then the marriage would be performed. Due to physical and mental trauma the pregnancy got aborted on 05.04.2023.

8. As per the provisions of Section 438 Cr.P.C the Court may take into consideration, *inter alia*, the following factors:-

- (i) the nature and gravity of the accusation;
- (ii) the antecedents of the applicant including the fact as to whether he has previously undergone imprisonment or conviction by a Court in respect of any cognizable offence;
- (iii) the possibility of the applicant to flee from justice; and
- (iv) where the accusation has been made with the object of injuring or humiliating the applicant by having him so arrested,

9. The Hon'ble Apex Court in ***Nathu Singh vs. State of Uttar Pradesh 2021 (3) R.C.R.(Criminal) 162*** held that the discretionary powers under Section 438 Cr.P.C cannot be exercised in an untrammelled manner, the Court must take into account the statutory scheme under Section 438 Cr.P.C and balance the concerns of the investigating agency, complainant and the society at large with the concerns/interest of the applicant.

10. Keeping in view the facts of the present case that the petitioner who was interacting with the prosecutrix for the purpose of entering into a matrimonial tie, had received huge finances from prosecutrix which were made through bank transactions and on breaking of the said pre-nuptial conversation/ties, the said amounts were not cleared and the complainant had to resort to legal remedy by approaching the Court by way of filing civil suit, indicate that equity is not in favour of the petitioner. There are also allegations against the petitioner regarding unnatural sex. Keeping in view the facts of the present case, this Court is of the considered opinion that the allegations against the petitioner are grave in nature.

Custodial interrogation is also required as recovery is yet to be effected.

11. The decision relied upon by the petitioner in ***Pramod Suryabhan Pawar's case (supra) Sonu @ Subhash Kumar's case (supra), Mandar Deepak Pawar's case (supra) and Ansaar Mohammad's case (supra)*** are having different facts and are not applicable to the facts of the present case.

12. The equity is not in favour of the petitioner. There are no special grounds to grant the concession under Section 438 Cr.P.C to the petitioner. Consequently, the present petition is having no merits and is accordingly dismissed.

13. Pending application, if any, shall also stand disposed of.

22nd December, 2023
Shivani Kaushik

[HARPREET KAUR JEEWAN]
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No