

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CRM-M-36621-2023 (O&M)

Date of order: 17.08.2023

Gurmehar Singh Boparai

.....Petitioner(s)

Vs.

State of Punjab

.....Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. R.S. Cheema, Senior Advocate with
Mr. A.S. Cheema, Advocate
for the petitioner.

Nidhi Gupta, J.

Present is the first petition filed by the petitioner under Section 439 of Code of Criminal Procedure (hereinafter referred to as "Cr.P.C.") seeking grant of regular bail in case FIR No.83 dated 17.06.2023 registered under Sections 376, 420, 406, 506 and 120-B of Indian Penal Code, 1860 (hereinafter referred to as "IPC") at Police Station Sarabha Nagar, Ludhiana.

2. Brief facts of the case are that the complainant's matrimonial alliance was fixed with the son of the petitioner. The allegations as contained in the FIR (Annexure P1) are that during this courtship period, the petitioner's son committed rape upon the complainant on different occasions, and also that when the complainant's family was unable to fulfill the dowry demands of the petitioner's family, the alliance between the complainant and the petitioner's son was broken off.

3. It is inter alia submitted by learned Senior Counsel appearing on behalf of the petitioner that a perusal of the FIR reveals that

no specific allegation has been levelled against the petitioner. Though the FIR contains allegations of rape against the son of the petitioner, however, only general omnibus allegations have been levelled against the petitioner and other members of the family.

4. Learned Senior Counsel submits that thereafter, in her supplementary statement recorded under Section 161 Cr.P.C., the complainant has improved upon her earlier statement, and has alleged that the petitioner hatched a conspiracy with other accused to commit fraud upon the complainant and her family, and for misappropriation of articles. It has further been alleged that when the rape committed by the son of the petitioner was disclosed to the petitioner and his wife, the complainant was told that their son was already in a relationship with one girl and his marriage will be solemnised with her and not with the complainant. It is also alleged that the complainant was threatened that her objectionable photographs will be revealed on social media. Ld. Senior Counsel contends that it is therefore clear that the complainant has tried to embellish and improve upon her case in her statement under Section 161 Cr.P.C.

5. Learned Senior Counsel further submits that utterly false, vague and unsubstantiated allegations have been made in the FIR against the petitioner and other family members. It is submitted that one of the allegations levelled in the FIR is that the petitioner had demanded a Mercedes GLS car, however, the said allegation is absurd since the petitioner's son already owns the same car, as is evident from RC of the Mercedes GLS owned by the company/firm of the petitioner's son annexed at Annexure P9.

6. It is further submitted that perusal of the FIR reveals that it has been alleged therein that rape was committed upon the complainant on 26.08.2022. However, admittedly, the engagement ceremony was held thereafter on 28.11.2022. Learned Senior Counsel also refers to the photographs of the engagement ceremony (Annexure P2 to Annexure P8) which show that the complainant was accepted by the family of the petitioner and very expensive jewellery items were gifted by the petitioner and his family to the complainant. Learned Senior Counsel contends that it has been held by the Hon'ble Supreme Court in **"Naim Ahamed Vs. State (NCT of Delhi)" Law Finder Doc ID # 2116651**, that there is a difference between giving a false promise and committing breach of promise. It is submitted that the submissions made hereinabove amply demonstrate that the petitioner and his family had every intention of conducting the marriage of the son of the petitioner with the complainant. However, as the relationship soured between the parties, therefore, the alliance was broken off; and the present FIR is nothing but an attempt on the part of the complainant and her family to illegally harass the petitioner and his family by making utterly false, baseless, and unsubstantiated allegations.

7. Notice of motion.

8. Mr. Kunwarbir Singh, AAG Punjab accepts notice on behalf of the respondent-State. When this case had come up for hearing on 03.08.2023, learned State counsel appearing on advance notice had filed custody certificate dated 02.08.2023 as per which the petitioner has been in custody since 21.06.2023. Learned State counsel had also sought time to file status report. However, the same has not been filed today.

9. Mr. Keshav Pratap Singh, Advocate accepts notice on behalf of the complainant, and files Vakalatnama which is taken on record.
10. Learned counsel for the complainant submits that no doubt the main accused in the FIR is the son of the petitioner, however, the complainant in her statement under Section 161 Cr.P.C. has levelled serious allegations against the petitioner.
11. I have heard learned counsel for the parties.
12. Without commenting on the merits of the matter, however, keeping in view the totality of the facts and circumstances of the case, including the fact that the petitioner is an aged person and has been suffering from Ulcerative Colitis since 2009 and is suffering from Cervical Intervertebral Disk Bulge for the past three years as evident from medical certificate Annexure P11; as also the fact that the petitioner has no criminal antecedents, present petition is **allowed**. The petitioner namely Gurmehar Singh Boparai s/o Amrik Singh is ordered to be released on regular bail on his furnishing bail/surety bonds to the satisfaction of the concerned trial Court/Duty Magistrate.
13. Pending application(s) if any also stand(s) disposed of.

17.08.2023
Sunena

(Nidhi Gupta)
Judge

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No