

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M 40435/2022

Date of decision: 05.07.2023.

Sharik Ahmad

.....Petitioner

Vs.

State of Punjab

.....Respondent

CORAM HON'BLE MS. JUSTICE NIDHI GUPTA

Present:-

Ms. Savita Sisodia, Advocate for the petitioner.

Ms. Kanika Sachdeva, AAG Punjab

Mr. Sunil K. Chaudhary, Advocate for the complainant

Nidhi Gupta, J.

Petitioner through first petition under Section 439 of Code of Criminal Procedure, 1973 is seeking regular bail in case FIR No.0062 dated 1.7.2022 registered u/s 376(2)(n) and 506 IPC, at PS Dhakoli, District SAS Nagar, Mohali.

Ld. Counsel for the petitioner submits that the allegations levelled by the prosecutrix are utterly false as the petitioner and the prosecutrix were in a consensual live-in relationship. It is submitted that the alleged incident is stated to be of the year 2019, however, FIR has been registered by the prosecutrix only on 1.7.2022. Ld. Counsel submits that at the time of incident the prosecutrix was 35 years of age and had also been married and was a mother, whereas, the petitioner is 30-31 years unmarried boy.

Ld. Counsel further states that the prosecutrix has registered the FIR against the petitioner purportedly on the ground that the petitioner has refused to marry her and had induced her to have physical relations with him on the promise of marriage. It is submitted that in fact, it is the prosecutrix who has refused to marry the petitioner. In this regard ld. Counsel refers to the FIR wherein the prosecutrix/ complainant has stated that :-

"Copy of No. 0 FIR, "Sir, the contents of the letter are as under, to SHO Women Police Station, Sir, it is prayed, I Nishu d/o Harishankar r/o Sirsa, Bangroad, Sukhsagar Colony, Haryana, at present resident of r/o Flat No. 368, Metro Town, Peer Muchalla, Zirakpur, Tehsil Derabassi, District Mohali (Punjab); I was married with Sandeep Chaudhary r/o Sirsa in year 2013, out of this marriage, there is one 7 years old son, because of some domestic reasons, there was a divorce between us in year 2017; after that I came to reside with my son; at Manimajra, Chandigarh, subsequently, I started living at Panchkula, during this period I met Rakesh, he told me that he is unmarried and wanted to marry me. I told to him that I am a divorcee and is having one son, he stated it does not matters to me, I will own both of you, I told to him that after thinking. I shall tell to you, I shall also discuss with my family, he told me that I am resident of Manimajra, the conversation between us continued on phone and Whatsapp, he started putting pressure upon me for marriage, he told me that I am working in auto market at Manimajra and earns very nicely, I can bear the expenses of you and your son, then thereafter Rakesh started meeting me, during this period, Rakesh has taken me to New Heaven Hotel, at Dhakoli in year 2019 and under the promise of marriage made physical relations, with me. Thereafter he has taken me to Sampark Luxury Hotel King at Zirakpur, and there he also made physical relations with me, I resided in house No. 467, Sector-25, Panchkula, there he also comes,

after 1/2 days, and created again physical relation, with me and thereafter, I had given the birth to a girl child, on 17.10.2020 in Balaji Hospital, Sector-25. Thereafter I have come to know that Rakesh is a Muslim and his name is Sharik Ahmad, regarding this I have asked from him that you are a Muslim, why you have told me your name as Rakesh Verma, I shall file a complaint against you, in a police station, and then at that time, he started begging to forgive, then he stated that I am a Muslim and my name is Sharik Ahmad and I love you very much, I will marry with you, thereafter, we both jointly, opened a Saloon in Manimajra, in partnership, subsequently Sharik Khan continued meeting me, in January 2020, I noticed that I have conceived and I have told to Sharik Khan, regarding this that I am going to become mother of your child, and marry with me, he stated that I shall marry with you after the birth of child, after the birth of child he stopped meeting me, and he was saying that you convert to Islam, only then I shall marry with you and I refused to convert to Islam, and he refused to marry with and conversation was only through phone. Later on, again I came to Peer Musalla to reside, Sharik Ahmad, came to my resident at Peer Musalla and started persuading me for marriage, then I stated that I shall talk to you only if you marry with me just now, and he stated that I am ready to marry with you and he made physical relations, with me in my house, he visited my house with a gap of 1/2 days and created physical relations with me, then I stated to him that from you I have also given the birth to a daughter and I have been defamed a lot, he was putting off the marriage from the last one and half year and during this period he also made physical relations with me. From last three month neither he is responding to my calls, nor he is calling me, today I came regarding some work and met Shari Ahmad, I asked from him that neither you are responding to my call nor you are calling me, then he himself-stated that if you convert to Islam and become Muslim, only

then I shall marry with you and I flatly refused, then he stated that I do not want to keep any relation with you, I cannot marry with you, I begged and persuaded him for marriage me but he did not agree and refused to marry with me and to own the child. Sharik Ahmad also give me threats to kill me and to cause loss to my business. I am having proof with me and I am also having the recording regarding to accept Islam, if anything happens to me then Sharik Ahmad shall be responsible for that, I am maintaining myself, my child; at last I pray to you that Sharik Ahmad by hiding his religion and under the pretext of marriage made physical relations with me, strict action may kindly be taken and justice be done with me. Feeling obliged. With Thanks, Sd/- Nishu d/o Harishankar, Mobile No., 7340897366, House No., 467, Panchkula, Sector-25"

It is submitted that perusal of the FIR reproduced above, reveals that by her own admission, it was the prosecutrix who had "flatly refused" to marry the petitioner as he was a Muslim. It is stated that as per the Annexure P-3 Birth Certificate, Sandeep Kumar former husband of the prosecutrix is the father of the girl child born on 17.10.2020 to the prosecutrix.

Ld. Counsel further submits that even the allegation of the prosecutrix that she was not aware of the fact that the petitioner was a Muslim is patently false. It is submitted that a perusal of Annexure P-1 dated 26.8.2020 shows that petitioner in partnership with the prosecutrix had opened a beauty Saloon under the name and style of 'Hair Beauty Lounge' at Manimajra wherein name of the petitioner is duly mentioned as Sharik Ahmad and therefore, it cannot be said that the prosecutrix was not aware about the petitioner being a Muslim. It is submitted that Annexure P-1 also reveals that the entire financial dealings were in the hands of prosecutrix.

It is further submitted that therefore, clearly the relationship between the petitioner and prosecutrix was consensual and the petitioner has been falsely implicated in the present case. It is submitted that the petitioner is in custody since 5.7.2022 and charges have been framed on 1.7.2023.

Per contra it is submitted by the Id. Counsel for the State that the petitioner had lured the prosecutrix on the pretext of marrying her. It is submitted by the Id. Counsel that the petitioner is a Muslim which fact was not disclosed to the prosecutrix. However, Ld. Counsel is unable to deny that the year of incident is 2019 and the FIR was lodged 1.7.2022. Custody certificate dated 4.7.2023 has been placed on record according to which petitioner is in custody since 5.7.2022.

Heard Id. Counsel and perused the material on record.

Keeping in view the totality of facts and circumstances of the case and the facts that:-

- (a) petitioner is in custody since 5.7.2022 i.e. for a period of 12 months and four days;
- (b) trial is at the initial stage;
- (c) charges have been framed on 1.7.2023 and therefore, trial will take some time;
- (d) perusal of the custody certificate reveals that no other case is pending against the petitioner;

this Court is of the considered view that the present petition deserves to be allowed.

Accordingly, present petition is allowed and petitioner Sharik Ahmad son of Rafeeq Ahmad is ordered to be released on regular bail on his furnishing bail bonds/surety bonds to the satisfaction of CJM/Duty Magistrate concerned.

However, it is made clear that nothing stated above shall be construed as an expression of opinion on the merits of the case.

05.07.2023.
Joshi

(Nidhi Gupta)
Judge

Whether speaking/reasoned
Whether reportable

Yes
Yes/No