

202 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-43232-2022
Date of Decision: 12.10.2023

RAJESH KUMAR

... PETITIONER

V/S

STATE OF HARYANA

... RESPONDENT

CORAM: HON'BLE MR. JUSTICE VIVEK PURI

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

Mr. Ranvir Singh Arya, Addl. AG Haryana.

Mr. Aditya Sanghi, Advocate for the complainant.

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VIVEK PURI, J. (ORAL)

1. On 19.09.2022, following order was passed by the Co-ordinate

Bench:

“Instant petition has been filed under Section 438 Cr.P.C. praying for grant of anticipatory bail to the petitioner in case FIR No.39, dated 01.09.2022, under Sections 376(2)(n), 506 IPC and Sections 377, 34 IPC (added later on), registered at Police Station Women, Sirsa, District Sirsa.

Counsel for the petitioner has submitted that both the petitioner and the complainant are of the age of majority. He submits that the prosecutrix was already married and thereafter both of them had entered into consensual relationship. He has submitted that the allegations against the petitioner are that he established physical relations with the prosecutrix on the promise of marriage. He has further submitted that both the petitioner and the prosecutrix were already married and hence in the facts and circumstances consent of the prosecutrix cannot be said to have been taken by the misconception of facts. He has relied upon Pramod Suryabhan Pawar vs The State of Maharashtra and others (2019) 9 SCC 608 and submits that in view of the overall facts and circumstances, no case for offence under Section 376 IPC is made out on the ground that consent of the prosecutrix was obtained by the petitioner by

means of coercion or “misconception of fact”. He has submitted that petitioner is a soldier in Indian Airforce and he has no criminal antecedents and hence, in view of the above mentioned facts, no case for custodial interrogation is made out, however, petitioner is ready to join the investigation and abide by all the terms and conditions of the anticipatory bail if this Court considers his request for granting the same.

Issue notice of motion for 17.01.2023.

On the asking of the Court, Mr.B.S.Virk, DAG, Haryana, who is present in Court, accepts notice on behalf of the respondent-State, whereas Mr.Aditya Sanghi, Advocate, puts in appearance on behalf of the prosecutrix and opposed the submissions made by counsel for the petitioner.

In the meanwhile, in the event of arrest, the petitioner shall be released on interim bail subject to the satisfaction of the Arresting Officer/Investigating Officer. The petitioner shall join investigation before the Investigating Agency/Officer. He shall abide by the following conditions as envisaged under Section 438(2) Cr.P.C.:-

“(i) That the petitioner shall make himself available for interrogation by a police officer as and when required to do so;

(ii) That the petitioner shall not directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer;

(iii) That the petitioner shall not leave India without prior permission of the Court.”

State is directed to file status report on or before the next date of hearing.”

2. Affidavit of Jagat Singh, Deputy Superintendent of Police, Sirsa, on behalf of the State has been taken on record.

3. Learned counsel for the petitioner contends that in pursuance of the interim directions, the petitioner has joined the investigation. Furthermore, the allegations with regard to the registration of FIR No. 243 dated 22.04.2023 under Sections 506, 509 IPC, registered at Police Station City Mandi Dabwali, District Sirsa are against another person by the name of Rajesh s/o Jaipal. The petitioner is not an accused in that case.

4. Learned State counsel, on instructions from ASI Darshana, has submitted that the petitioner has joined the investigation and his custodial interrogation is not required. He further submits that the other FIR bearing No. 243 dated 22.04.2023 was registered against Rajesh s/o Jaipal (who is not a petitioner in the present case) and on conclusion of investigation, the challan has been presented in the said case.

5. Learned counsel for the complainant has opposed the bail application on the score that there are categorical allegations that physical relations were developed on the false pretext of marriage.

6. It is significant to note that in pursuance of the interim directions, the petitioner has joined the investigation and his custodial interrogation is not required. At the earlier instance, learned counsel for the complainant has submitted that the petitioner has threatened and intimidated the prosecutrix but the FIR in that regard is against some other person.

7. Considering above, the petition is allowed and the interim bail granted by this Court vide order dated 19.09.2022 is made absolute.

12.10.2023

Janki

**(VIVEK PURI)
JUDGE***Whether speaking/reasoned : Yes/No**Whether reportable : Yes/No*