

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
104 **CRM-M-44160-2023 (O&M)**
Date of decision: 06.09.2023

HXXX

...Petitioner(s)

Vs.

State of Punjab & Another

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present: - Mr. Deep Singh Saini, Advocate
for the petitioner.

NIDHI GUPTA, J.

Prayer in this petition filed under Section 439(2) Cr.P.C. is for cancellation/setting aside of impugned order dated 22.05.2020 (Annexure P5) passed by learned Judge, Special Court, SAS Nagar (Mohali), Punjab in bail application bearing CNR No.PBSA0100-2923-2020 titled as "Gaurav Vs. State of Punjab", whereby respondent No.2 has been granted concession of regular bail in FIR No.124 dated 10.12.2019 under Section 376 IPC registered at Police Station Dhakoli, District SAS Nagar, Punjab.

2. Learned counsel for the petitioner/victim vehemently submits that the learned trial Court is in error in granting bail to the accused/respondent No.2 herein as the petitioner has made serious allegations in the FIR against respondent No.2. It is submitted that the petitioner had entered into relations with respondent No.2 on his assurance that he would solemnise marriage with the petitioner, however, thereafter, respondent No.2 had reneged on his promise and therefore, the petitioner was constrained to lodge the present FIR. It is stated that

thereafter, respondent No.2 was arrested by the police and lodged in Central Jail, Patiala. However, in the meantime, family members of respondent No.2 came and compromised the matter with the petitioner vide compromise deed (Annexure P2) and affidavit dated 08.02.2020 (Annexure P3).

3. Learned counsel submits that thereafter, a petition bearing CRM-M-8350-2020 was filed before this Court seeking quashing of the present FIR on the basis of compromise. In pursuance thereof, statement of respondent No.2 was recorded before the learned Illaqa Magistrate on the basis of which respondent No.2 was released on regular bail. Thereafter, on 03.07.2020, engagement ceremony was conducted between the petitioner and respondent No.2. However, thereafter, respondent No.2 and his family members once again started prevaricating and did not solemnize marriage of the petitioner with respondent No.2 as per *muhurat*. Respondent No.2 and his family members also failed to fix date of marriage of respondent No.2 and the petitioner. Accordingly, when CRM-M-8350-2020 came up for final hearing on 16.09.2021, the same was dismissed by this Court in view of the fact that terms and conditions of the compromise had not been complied with. Thereafter, marriage of the petitioner and respondent No.2 was solemnised on 19.09.2021 as evident from marriage certificate (Annexure P8).

4. Learned counsel further submits that after the marriage, respondent No.2 took the petitioner to Delhi whereby they cohabited as husband and wife and lived in a rented accommodation. However,

respondent No.2 started making demands for day-to-day expenses and cash money from the petitioner and her family. He also did not give her proper love and care. Respondent No.2 even lived with the petitioner at her parental home for some time as he was unable to sustain the petitioner. Thereafter, the petitioner and respondent No.2 even lived at Dhakoli for some time. It is further submitted that on 06.04.2022, respondent No.2 mercilessly beat the petitioner because of which she was admitted in Civil Hospital, Dhakoli and the matter was reported to the police. Copy of MLR is annexed as Annexure P10. A compromise dated 25.03.2022 (Annexure P11) was again entered into between the parties. However, respondent No.2 has failed to adhere to terms and conditions of the said compromise. It is submitted that in view of these facts, it is clear that the petitioner is a helpless lady and has been physically, mentally, financially and emotionally exploited by respondent No.2 and therefore, learned trial Court is in patent error in granting bail to respondent No.2 vide impugned order dated 22.05.2020 (Annexure P5) and therefore, it is prayed that the said order may be set aside.

5. I have heard learned counsel for the petitioner.

6. Perusal of record reveals that the petitioner is currently about 27 years of age. The record, as also the submissions made hereinabove by learned counsel for the petitioner, bears out that although the relationship between the parties has been fraught with hurdles, however, admittedly, the relationship was consensual in nature. The Hon'ble Supreme Court in ***Ansar Mohammad Vs. State of Rajasthan &***

Another” 2022 SCC OnLine SC 886, has categorically held that an FIR under Section 376 IPC cannot be filed just because a long-standing relationship between the parties is no longer working out. Hon’ble Supreme Court in ***“Naim Ahamed Vs. State (NCT of Delhi) Law Finder Doc ID # 2116651***, has further held that in cases of *‘consensual rape, there is a difference between false promise and breach of promise and that it would be a folly to treat each breach of promise to marry as a false promise and to prosecute a person for the offence under Section 376 IPC.’* Relevant part of said judgment is reproduced hereinbelow:-

“20. The bone of contention raised on behalf of the respondents is that the prosecutrix had given her consent for sexual relationship under the misconception of fact, as the accused had given a false promise to marry her and subsequently he did not marry, and therefore such consent was no consent in the eye of law and the case fell under the Clause - Secondly of Section 375 IPC. In this regard, it is pertinent to note that there is a difference between giving a false promise and committing breach of promise by the accused. In case of false promise, the accused right from the beginning would not have any intention to marry the prosecutrix and would have cheated or deceived the prosecutrix by giving a false promise to marry her only with a view to satisfy his lust, whereas in case of breach of promise, one cannot deny a possibility that the accused might have given a promise with all seriousness to marry her, and subsequently might have encountered certain circumstances unforeseen by him or the circumstances beyond his control, which prevented him to fulfill his promise. So, it would be a folly to treat each breach of promise to marry as a false promise and to prosecute a person for the offence under

Section 376. As stated earlier, each case would depend upon its proved facts before the court.”

7. Even this Court in **CRM-M-30691-2023** titled as **“Kuldeep VS. State of Punjab”** has followed the above said decisions of the Hon’ble Supreme Court.

8. In the present case, admittedly, respondent No.2 has already married the petitioner. However, subsequently relationship between the petitioner and respondent No.2 has soured and as per ratio of the above said judgments, failure of such relationship prima facie does not constitute an offence under Section 376 IPC.

9. Moreover, perusal of MLR (Annexure P10) falsifies the allegation of the petitioner that respondent No.2 had mercilessly beaten her, as there are no injuries mentioned in the said MLR and it only shows that the petitioner has headache for ten days and was suffering from flu.

10. In view of the above said uncontroverted factual and legal position, I find no ground is made out to interfere in the impugned order.

11. **Dismissed.**

12. Pending application(s) if any also stand(s) disposed of.

06.09.2023

Sunena

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No

(Nidhi Gupta)

Judge