

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CRM-M-54409-2022
Date of Decision: 10.04.2023

Sunil Kumar alias Babu Dadra ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Mr. Sandeep Arora, Advocate for the petitioner
Mr. Amish Sharma, AAG, Punjab
(assisted by SI Nirmal Singh)
Mr. Amit Dhawan, Advocate for the complainant

JAGMOHAN BANSAL, J. (ORAL)

1. The petitioner through instant petition under Section 439 Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') is seeking regular bail in FIR No.154 dated 02.09.2022 under Sections 354, 354-D & 376 of Indian Penal Code, 1860 (for short 'IPC') registered at Police Station Division No.7, District Jalandhar.
2. The case of the prosecution is that prosecutrix lodged a complaint dated 21.03.2022 alleging that petitioner and his friend Sunil has committed rape upon her. The complaint was marked to Women Cell, Jalandhar. The prosecutrix and petitioner compromised the matter and complainant withdrew her complaint. As per compromise, petitioner has to perform marriage with prosecutrix, however, he did not perform

marriage with prosecutrix after withdrawal of the complaint. The petitioner, after withdrawal of the complaint, made physical relations with the prosecutrix on the pretext of marriage.

3. Learned counsel for the petitioner, *inter alia* contends that there was consensual relation between the parties. Withdrawal of complaint itself indicates that no rape was committed on the part of petitioner. The prosecutrix is a divorcee having 3 children from her divorced spouse. The petitioner cannot be held guilty of commission of offence of rape on the ground of non-performing of marriage with the prosecutrix. The petitioner vide order dated 19.11.2020 passed by this Court in CRM-M-37357-2020 has been granted concession of regular bail in FIR No.190 dated 04.07.2020. In the said FIR, no specific role was attributed to the petitioner.

4. Status report by way of affidavit dated 07.04.2023 of Gurmeet Singh, P.P.S., Assistant Commissioner of Police, Model Town, Jalandhar filed on behalf of respondent-State is taken on record. Registry is directed to tag the same at appropriate place.

5. Learned State counsel as well as learned counsel for the complainant would submit that petitioner made physical relations with the prosecutrix on the pretext of marriage. The prosecutrix lodged complaint against the petitioner which was withdrawn because the matter

was compromised, however, petitioner did not solemnize marriage with the prosecutrix, thus, FIR was lodged against him.

6. Learned State counsel, on instructions from S.I. Nirmal Singh, submits that police report has already been filed and charges stand framed. He further submits that out of 13 witnesses only one witness i.e. prosecutrix has been examined. The petitioner is involved in the commission of grave offence, thus, no leniency is warranted and release of petitioner would hamper the trial.

7. In the case in hand, the prosecutrix is a divorcee having three children. The prime grievance of the prosecutrix and contention of complainant as well as State counsel is that petitioner has not solemnized marriage with the prosecutrix though he has made physical relations on the pretext of marriage. The question of consent of prosecutrix, as contemplated under Section 90 of IPC, has to be examined and adjudicated by the Trial Court. The petitioner is in custody since 11.09.2022. There are 13 prosecution witnesses and till date only one witness i.e. the prosecutrix has been examined, thus, there is abysmally low possibility of conclusion of trial in near future. As prosecution has right to arrest, investigate the matter and restrain an accused from manipulating or winning over witnesses, similarly accused in view of Article 21 of the Constitution of India has right to defend himself and put forth his stand which cannot be possible while in custody. The prosecution has not led any convincing/plausible documentary or oral

evidence indicating possibility of petitioner being flee from justice or tampering the evidences or winning over/threatening the witnesses.

8. In view of afore-stated facts and circumstances, this Court is of the considered opinion that present petition deserves to be allowed and accordingly allowed. The petitioner is ordered to be released on bail subject to conditions as may be imposed by Trial Court/Illaqa/Duty Magistrate concerned.

9. Nothing observed hereinabove shall be construed as expression of opinion of this Court on merits of the case and Trial Court shall proceed without being prejudiced by observations of this Court.

(JAGMOHAN BANSAL)
JUDGE

10.04.2023
Mohit Kumar

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>