

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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CRM-M-2549-2024

Date of Decision: January 18, 2024

Jobanjot Singh

.....Petitioner(s)

Vs.

State of Punjab

.....Respondent(s)

CORAM: HON'BLE MS. JUSTICE SUDEEPTI SHARMA

Present: Mr.Bikramjit Singh Baath, Advocate
for the petitioner(s).

Ms. Kanica Sachdeva, AAG, Punjab
assisted by ASI Gurnam Singh.

SUDEEPTI SHARMA J. (ORAL)

The present petition has been filed under Section 438 Cr.P.C.
for grant of anticipatory bail to the petitioner in case FIR No.0229 dated
13.12.2023, under Sections 376/420/506 IPC, registered at Police Station
Dinanagar, District Gurdaspur.

2. The brief facts of the case are that the complainant came in
contact with the present petitioner through social media. After their
acquaintance, they started meeting each other. On the pretext of performing
marriage with the complainant and to adopt her daughter, the petitioner
committed rape with her many number of times. He has also taken money
from the complainant to the tune of Rs.4,15,000/-. After that, the petitioner
was arrested by the police for having illegal weapon. When he came out of
the jail, the complainant asked him for adoption and return of money, he

refused and threatened her of dire consequences. On the basis of this, the present FIR has been registered.

3. Learned counsel for the petitioner contends that the offence under Section 376 IPC is not made out. To substantiate his contention, he relies upon judgment dated 12.08.2022 passed by Hon'ble the Apex Court in Criminal Appeal No.1231 of 2022 titled as '***Shambhu Kharwar Vs. State of Uttar Pradesh and another.***' Relevant paragraph is as under:-

"10. An offence is punishable under Section 376 of the IPC if the offence of rape is established in terms of Section 375 which sets out the ingredients of the offence. In the present case, the second description of Section 375 along with Section 90 of the IPC is relevant which is set out below.

"375. Rape A man is said to commit "rape" if he under the circumstances falling under any of the following seven descriptions

Firstly...

Secondly. Without her consent.

[..]

Explanation 2. Consent means an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non-verbal communication, communicates willingness to participate in the specific sexual act.

Provided that a woman who does not physically resist to the act of penetration shall not by the reason only of that fact, be regarded as consenting to the sexual activity.

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90. Consent known to be given under fear or misconception - A consent is not such a consent as is intended by any section of this Code, if the consent is given by a person under fear of injury, or under a misconception of fact, and if the person doing

the act knows, or has reason to believe, that the consent was given in consequence of such fear or misconception, or.."

3 (a). Learned counsel for the petitioner also relies upon judgment dated 20.10.2023 passed by Hon’ble Delhi High Court in Bail Application No.2923/2023, titled as ‘**Sushant Kumar Vs. The State.**’ Relevant paragraph is reproduced hereinunder:-

“. The petitioner sought the grant of anticipatory bail on the grounds that the present FIR is the outcome of the calling-off of the proposed marriage between the petitioner and the prosecutrix. The allegations of the prosecutrix as stated in the present FIR are vague as she has not mentioned the date of occurrence of the alleged offence. There is an unexplained delay of about 05 months in lodging of the present FIR. The petitioner has clean antecedents and no prior investigation pertaining to any offence is pending against him. The petitioner is ready to submit himself to any condition imposed by this Court. The petitioner is an employee of the Central Government and there is no likelihood of him fleeing away, evading the trial, tampering with the evidence or threatening the witnesses. The counsel for the petitioner also raised other grounds and prayed that the petitioner be granted anticipatory bail.”

4. On the contrary, learned State counsel, on instructions, opposes the present petition by contending that the petitioner is a habitual offender and as per instructions provided to her, he is involved in the following cases:-

Sr.	FIR No.	Dated	Police Station	Sections
1.	124	08.07.2023	Dinanagar	25/54/59 of Arms Act
2.	234	30.11.2021	City Gurdaspur	307, 452, 148, 149 IPC

3.	12	20.03.2022	Doragla	379-B, 341, 511 IPC, 25 of Arms Act
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5. I have heard learned counsel for the parties.
6. A perusal of the FIR shows that the petitioner on the pretext of false promise of marrying with the complainant, committed rape many times and also there is an allegation of transfer of amount to the tune of Rs.4,15,000/- by the victim to the petitioner. The petitioner also threatened the victim to face with dire consequences. Moreover, he is involved in the above-captioned FIRs. Therefore, I do not find any merit in the present petition.
7. Hence, the present petition being devoid of any merit, is hereby dismissed.
8. All pending applications, if any, stand disposed of.

(SUDEEPTI SHARMA)

JUDGE

January 18, 2024

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Whether speaking/reasoned: Speaking

Whether reportable: Yes / No