

CRM No.10580 of 2024 in/and
CRM-M No.10234 of 2024

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Neutral Citation No.2024:PHHC:037007

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

297+299

CRM No.10580 of 2024 in/and
CRM-M No.10234 of 2024
Date of decision:13.03.2024

Charan Singh ... Petitioner

Vs.

State of Haryana and another ... Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Ankush Dhanerwal, Advocate,
for the petitioner.

Ms. Nidhi Garg, AAG, Haryana.
for the respondent-State.

Respondent No.2 in person.

MANISHA BATRA, J.

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Prayer has been made by the petitioner for impleading the complainant as respondent No.2 in this petition which has been rendered infructuous in view of the fact that the prosecutrix already stands impleaded as such. Amended memo of parties has been filed and be tagged at the appropriate place.

Respondent No.2 has been duly served and has appeared in person.

The application stands disposed of.

Main Case

1. The present petition under Section 438 of Code of Criminal Procedure has been filed by the petitioner seeking anticipatory bail in case bearing FIR No.31, registered under Sections 323, 34, 376 (2) (n) and 506 of IPC at Police Station Palam Vihar, District Gurugram on the basis of statement recorded by the prosecutrix on 15.01.2024 alleging therein that the petitioner came into contact with her in February 2022. Initially, they had become friends and then by making proposal and promise to marry her, he maintained sexual relationship with her. She was taken by him to a hotel several times and physical relations were maintained between them. She had even become pregnant once but he got the pregnancy aborted. She alleged that subsequently he had started assaulting her physically and extended threats to her. Even his family members started threatening her and then from 25.12.2023, he severed all connections with her after telling her that he could not perform marriage with her. Investigation proceedings are being initiated. The petitioner had filed an application for grant of anticipatory bail before learned trial Court which had been dismissed vide order dated 15.02.2024.

2. It is argued by learned counsel for the petitioner that he has been falsely implicated in this case. Infact the prosecutrix and himself were previously working in a company and had befriended and then had fallen into love with each other. Their parents had come to know about this fact and they got agitated over it, due to which their relationship was broken up. He had performed marriage on 04.12.2023 and when this fact came to the knowledge of the prosecutrix, she had involved him falsely in this case. He

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has further argued that the allegations as levelled in the FIR are false on the face of the same because at one point, the prosecutrix has submitted that firstly, the physical relations were developed between them for the first time on 20.06.2023 but on other point, she stated that the same were maintained for two years. He has argued that there is delay in lodging of the FIR. The prosecutrix is an adult person. No promise to marry had been made by the petitioner with her. Neither he had entered into any physical relationship with her. Such relationship even if presumed to be entered into between the parties, could be stated to be nothing else but consensual one. Custodial interrogation of the petitioner is not required. He is ready to join the investigation. Therefore, it is argued that the petition deserves to be allowed. To fortify his argument, learned counsel for the petitioner has placed reliance upon authorities cited as **Sonu @ Subhash Kumar v. State of Uttar Pradesh and another**, 2021 (2) R.C.R. (Criminal) 269 and **Pramod Suryabhan Pawar v. The State of Maharashtra and another**, 2019 (4) R.C.R. (Criminal) 135.

3. Status report has been filed by the respondent-State and the same is taken on record. As per the status report, the custodial interrogation of the petitioner is required for thorough investigation in the matter. Learned State counsel has further argued that the petitioner engaged in sexual relations with the prosecutrix on the false promise of marrying her and, therefore, her “consent” being premised on a “misconception of fact” stands vitiated. There are serious allegations against him. No extraordinary circumstance has been made out thereby making entitled to seek benefit of pre arrest bail.

Therefore, it is urged that the petition does not deserve to be allowed.

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4. I have heard learned counsel for the petitioner and learned State counsel at considerable length and have gone through the record.

5. The respondent No.2 has also remained present in the Court in person.

6. The petitioner is alleged to have repeatedly ravished the respondent No.2 on the pretext of making promise to marry her. The offence of 'rape' as defined under Section 375 of IPC sets out certain circumstances. Relevant for the purpose of this case, is the second circumstance that a male subjecting a female to sexual intercourse without her 'consent', commits offence of rape. As per Explanation-2 of Section 375, '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. It will also be relevant to refer to Section 90 of IPC as per which a 'consent' 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, is not consent. The well settled proposition of law is that the 'consent' with respect to Section 375 of IPC, involves an active understanding of the circumstances, actions and consequences of the proposed act. The consent of a woman with respect to Section 375 must involve an active and reasoned deliberation towards the proposed act.

7. In the instant case, there is no doubt about the fact that the respondent No.2 is major as on asking, she disclosed that as on date i.e.

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today, she is 23 years old. As per her claim, she had maintained physical relations with the petitioner on a promise made by him to marry her. It is not the version of the petitioner that there was any consensual physical relationship between the parties rather he has denied having any such relationship having been developed between them at all. The “misconception of fact” alleged by the prosecutrix is the petitioner’s promise to marry her. In **Pramod Suryabhan Pawar’s** case (Supra) which has been cited by learned counsel for the petitioner, the Hon’ble Supreme Court while dealing with a petition in which quashing of an FIR registered under Section 376 and other sections had been sought, had observed that there is a distinction between a false promise given on the understanding by the maker that it will be broken, and the breach of a promise made in good faith but subsequently not fulfilled. It was observed in that case that the allegations in the FIR did not indicate that the promise by the appellant was false or that the prosecutrix engaged in sexual relations on the basis of this promise and there was also no allegation that when the appellant made promise to marry the complainant, it was done in bad faith or with the intention to deceive her. In **Sonu @ Subhash Kumar’s** case (Supra), there were no allegations to the effect that promise to marry given to the prosecutrix was false since inception. The charge sheet was ordered to be quashed by observing that it was subsequent refusal on the part of the accused to marry the prosecutrix which had been given rise to registration of FIR. In the instant case, the version of the prosecutrix is that the petitioner had made her enter into physical relationship with her by making promise to marry her whereas according to the petitioner though there was love affair

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between them but due to resistance qua their relationship by their parents, the same had been broken up and he has performed marriage elsewhere. It is also not his version that any physical relationship had been developed between them or at any point of time, he had given promise to marry the prosecutrix. In view of these circumstances, I am of the considered opinion that thorough investigation is required to be conducted in the matter and simply because of the fact that the prosecutrix is major, it cannot be assumed that the physical relationship if any between them was consensual in nature or that the petitioner had not made any promise to marry her or that there was any misconception of fact, on the part of the prosecutrix.

8. The well settled proposition of law is that while considering an application for grant of anticipatory bail, the Court has to consider the nature of the offence, the role of the person, the likelihood of his influencing the course of investigation or tampering with evidence including intimidating witnesses. The powers under Section 438 of Cr.P.C. are to be exercised in extraordinary and sparing circumstances. More so, custodial interrogation of a suspected person is qualitatively more elicitation oriented than questioning a suspect who is well ensconced with a favourable order under Section 438 of Cr.P.C. Many useful information can be disinterred during custodial interrogation. It is also a matter of discretion to grant or not to grant pre-arrest bail. Keeping in view the discussion as made above, I am of the considered opinion that no extraordinary or sparing circumstance entitling the petitioner to seek concession of pre-arrest bail has been made out rather his custodial

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interrogation is required for thorough investigation in the matter by the police. Accordingly, finding no merit, the petition is dismissed.

13.03.2024
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(MANISHA BATRA)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No