

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

203

CRM-M No.10673 of 2024
Date of decision: 10.04.2024

Arun Kumar ... Petitioner

Vs.

State of Punjab and another ... Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Arihant Jain, Advocate,
for the petitioner.

Mr. Amandeep Singh Samra, AAG, Punjab.

Mr. Parambir Singh, Advocate,
for respondent No.2.

MANISHA BATRA, J.

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.122 registered under Sections 376, 420 and 506 of IPC (Section 323 of IPC added later on), at Police Station Cantt. Jalandhar, District Police Commissionerate, Jalandhar.
2. The factual matrix of the case in brief and as relevant for the purpose of disposal of this petition is that the aforementioned FIR was registered on the basis of statement recorded by the prosecutrix "D" (name withheld) on 05.12.2023 alleging therein that she had been

recruited as a temporary Constable in Punjab Police, Jalandhar under Sports Quota on 15.06.2017. In the year 2018, she came into contact with the petitioner who is a Police official. Conversation had started between them and after sometime, their relationship had become intimate when the petitioner offered to marry the prosecutrix and told her that he had even started discussing about their matrimonial alliance with his family members. In view of the promise so given by the petitioner to marry her, the prosecutrix got allotted a quarter in the official complex at the place wherein she was posted. The petitioner started living with her in the same house. Sometime thereafter, she came to know that the petitioner was married about two years back and his wife was living in Canada. On questioning him, he denied the factum of his being married. She further alleged that on 01.12.2023, the wife of the petitioner made a call to her on phone disclosing the factum that she was married with the petitioner and when the prosecutrix questioned the petitioner, then instead of giving any satisfactory reply, he started assaulting her physically and on the same night, he established physical relations with her forcibly, while extending threats to kill her. On the basis of her statement and after registration of FIR, the investigation proceedings have been initiated. The petitioner had moved an application for grant of anticipatory bail before the Court of learned Additional Sessions Judge, Jalandhar which had been dismissed vide order dated 22.02.2024.

3. The present petition has been filed by the petitioner on the grounds and it is argued by his counsel that he has been falsely

implicated in this case with a motive to be harassed and humiliated. The prosecutrix and himself were in live-in-relationship. She had levelled false allegations that he was married or that she had received a call from the wife of the petitioner from Canada on 01.12.2023 whereas the petitioner is a bachelor and never married. While living with him, the prosecutrix had been making the petitioner to pay money on account of household expenses but as her demands for money had started increasing, hence he had left her company, that had culminated into lodging of this FIR against him, though he had never made any promise to marry her. Rather it was the prosecutrix who was already married and had developed relations with other persons as well.

4. It is further submitted by the petitioner that there is no medical evidence to support the allegations levelled in the complaint. No case for commission of committing any offence of cheating or criminal intimidation of the prosecutrix at his hands has been made out. Since they lived in a consensual relationship by way of live-in-relationship, therefore, no case for commission of offence of rape was made out as well. His custodial interrogation is not required. He is ready to join the investigation. With these broad submissions, it is argued that he deserves to be extended benefit of pre arrest bail. To fortify his arguments, he has placed reliance upon **Pramod Suryabhan Pawar v. The State of Maharashtra and another**, 2019 (4) R.C.R. (Criminal) 135 and **Mandar Deepak Pawar v. The State of Maharashtra and another**, 2022 (4) R.C.R. (Criminal) 274.

5. Status report has been filed by the respondent-State as per which there are serious allegations against the petitioner as by making a false promise to marry her, he developed physical relations with her and on 01.12.2023 by applying force had established physical relations with the prosecutrix against her will. He had also caused injuries to her. Custodial interrogation of the petitioner was required for thorough investigation in the matter. Therefore, it is argued that he does not deserve to be given benefit of bail at this stage.

6. Respondent No.2-prosecutrix also filed reply alleging therein that the petitioner by representing himself to be an unmarried person and by telling her that he wanted to marry her, had established relations with her. He had even introduced her to his family members and friends as his future wife. She used to attend his family functions. Subsequently, she came to know about the factum of petitioner being already married and this suspicisoin had turned into reality when the wife of the petitioner had made a call to her on 01.12.2023. She had got divorced from her previous husband by judgment and decree dated 17.08.2019 and this fact was very much within the knowledge of the petitioner. Infact it was she, who had been transferring money in the account of the petitioner and had been incurring the household expenses while living with the petitioner. The petitioner had committed act of forcible sexual intercourse upon her as on 01.12.2023 against her wishes. Along with the reply, the respondent No.2 annexed several photographs showing her to be with the petitioner, his family members or some friends as claimed by her. She has also placed

on record Annexure R-2/2 whatsapp chat received from phone No. +1(204) 951-0635 claiming that the same had been made by wife of the petitioner to her. While stressing that in view of serious nature of the allegations, the petitioner does not deserve to be given concession of bail, it is urged that the petition deserves dismissal. To fortify his argument, learned counsel has placed reliance upon **Anurag Soni v. State of Chhattisgarh**, 2019 (2) R.C.R. (Criminal) 852.

7. I have heard learned counsel for the parties at considerable length and have gone through the record.

8. The case as set up by the prosecution is that the prosecutrix who is posted in Police Department came into contact with the petitioner who is also a police official and by representing himself to be an unmarried person and by making promise to marry the prosecutrix who was a divorcee, he had developed physical relationship with her. The prosecutrix subsequently came to know that the petitioner was married two years back and his wife was living in Canada. As per the allegations on 01.12.2023, the wife of the petitioner had called the prosecutrix conveying about the factum of her being married with the petitioner and on questioning the petitioner, he had not only physically assaulted her but had also committed rape upon her on the same night besides criminally intimidating her. The parties were admittedly living in consensual relationship since the year 2018 and from the document placed on record by the prosecutrix as Annexure R-2/3 itself shows that her marriage with her previous husband was dissolved by a decree of divorce only on

17.08.2019 as this document is a copy of order of the said date. Meaning thereby that during the subsistence of her marriage with her previous husband, the prosecutrix had also maintained relationship with the petitioner to that extent that they had been living in live-in-relationship. She is an adult woman. The fact that the prosecutrix was also married at that time shows that she was well aware that no valid marriage between the petitioner and herself could be performed. As such, it is a debatable question that the petitioner established physical relationship with her by making promise of marriage.

9. However, so far as the allegations that as on 01.12.2023 she was physically assaulted and was also ravished against her will by the petitioner and criminally intimidated by him are concerned, no doubt, a perusal of Annexure R-2/7 which is copy of her medico legal report shows that multiple bruises and abrasions were found on her person. She might have been in consensual relationship with the petitioner earlier but the allegations with regard to her being ravished against her will on 01.12.2023 are such which are required to be investigated upon. She has been medically examined. FSL report is awaited. For the purpose of conducting thorough and proper investigation in the matter, custodial interrogation of the petitioner is required. The Court has also to see that an order of anticipatory bail should not operate as inroad in the normal legal procedure of criminal cases by the trial Court. More so, it is well settled proposition of law that powers under Section 438 of Cr.P.C. are to be exercised in extraordinary and exceptional circumstances whereas no

such circumstances are made out in this case. Accordingly, finding no reason to allow the petitioner, the same is dismissed.

10.04.2024
manju

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No