



IN THE HIGH COURT OF PUNJAB & HARYANA  
AT CHANDIGARH

203

CRM-M-10959-2024  
Date of decision: 31<sup>st</sup> May, 2024

Gurvinder Singh @ Prince  
Versus  
State of Haryana  
...Petitioner(s)  
...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Gaurav Grover, Advocate for the petitioner.  
Mr. Neeraj Poswal, AAG, Haryana.  
Mr. G.C. Shahpuri, Advocate for the complainant.  
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MANISHA BATRA, J (ORAL):-

The present petition has been filed under Section 439 of Cr.P.C.  
seeking regular bail in FIR mentioned below:-

| FIR No. | Date       | Police Station | Sections                       |
|---------|------------|----------------|--------------------------------|
| 36      | 08.11.2023 | Women, Panipat | 376(2)(n) and 506 of IPC, 1860 |

2. The relevant fact in brief are that the aforementioned FIR was lodged on the basis of a written complaint submitted by the prosecutrix (name withheld) on 08.11.2023 alleging therein that she had uploaded her profile at shaadi.com website app for the purpose of matrimonial alliance. On 09.05.2023, the petitioner had contacted her through whatsapp and showed interest in her. He called her at hotel Pyramid Panipat on 12.05.2023 for having conversation. Thereafter, he called her mother and told her that he was interested to marry the prosecutrix. On 21.05.2023, on his asking, the



prosecutrix and her brother went to his house at Delhi wherein, they met the family members of the petitioner who too showed interest in getting the petitioner married with the prosecutrix. On 01.06.2023, when the petitioner was coming to drop her at her house at Panipat, then on the way, he stopped his vehicle in an abandoned area and forcibly established physical relations with her by representing that they were going to become husband and wife very soon. Thereafter, he even started addressing her as his wife while having conversation with her on phone. She alleged that during the period from 01.06.2023 till 03.09.2023, by calling her on one pretext or the other, he established physical relations with her forcibly. On 17.09.2023, their family members had performed roka ceremony between the petitioner and the prosecutrix. Thereafter, also, the accused had established physical relations with her on two different occasions in the month of September, 2023. Then on the pretext of taking her to Goa for their pre-wedding shoot on 11.10.2023, he took her to his house on 09.10.2023, wherein also she was sexually assaulted.

3. The complainant further alleged that they stayed in a hotel at Goa from 11.10.2023 to 15.10.2023 wherein the petitioner prepared her videos and again had physical relations with her. However, thereafter, there was a sudden change in the behaviour of the petitioner and he stopped even taking calls from the prosecutrix and then disclosed to her that he had done all this only to satisfy his lust and bluntly refused to perform marriage with her. While alleging that the petitioner had repeatedly sexually assaulted her by making promise to marry her, without having intention to do so and had



spoiled her life, thus, she prayed for taking action.

4. After registration of FIR, investigation proceedings were initiated. The victim was medically examined on 09.11.2023. Her statement under Section 164 of Cr.P.C. was recorded. Records from different hotels were obtained which proved that the prosecutrix and the petitioner had stayed there during different intervals of time. The photographs of roka ceremony of the petitioner and prosecutrix were also taken into custody along with other documents. The petitioner was arrested on 23.11.2023. He suffered disclosure statement admitting his involvement in the subject crime and got recovered the car which was used twice for committing act of rape upon the prosecutrix. The parents of the petitioner who were also named in the FIR, were found to be innocent. After completion of necessary investigation and usual formalities, challan was presented in the Court and presently, the petitioner is facing trial for the commission of aforementioned offences. He had moved an application for grant of regular bail before the learned trial Court which was dismissed vide order dated 23.01.2024.

5. 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. There was delay of three months in lodging of the FIR. The petitioner had never given any false promise to marry the prosecutrix. Rather, he had even performed roka ceremony with her. Even their pre-wedding shoot was done. The prosecutrix had voluntarily developed physical relations with him. Infact, his family had become reluctant to perform marriage with the prosecutrix, when it came to their knowledge that



the prosecutrix used to upload her vulgar videos and photographs in her private social media account. The prosecutrix had apologized for her conduct. The petitioner is still ready to perform marriage with the prosecutrix. It is further argued that ingredients for commission of offence of rape are not at all attracted in this case and it is not a case of obtaining consent of the prosecutrix by way of any fraud or making false promise, it is, therefore, urged that the petitioner who is in custody since 23.11.2023 deserves to be given benefit of bail. To fortify his arguments, learned counsel for the petitioner has placed reliance upon authorities cited as ***‘Deepak Gulati Vs. State of Haryana (2013) 7 SCC 675’***, ***‘Pramod Suryabhan Pawar Vs. The State of Maharashtra, 2019(4) RCR (Criminal) 135’***, ***‘Sheikh Arif Vs. The State of Maharashtra and another, 2024 INSC 70’***.

6. Status report has been filed by respondent-State as per which, the petitioner by giving promise to marry the prosecutrix had repeatedly sexually assaulted her and then backed-out from the same. He had suffered disclosure statement admitting his involvement in the subject crime. Allegations against him are serious in nature. The prosecutrix is yet to be examined. There are chances of petitioner’s intimidating the material witnesses and absconding, if extended benefit of bail. Therefore, it is argued that the petition does not deserve to be allowed.

7. I have heard learned counsel for the petitioner as well as learned State counsel at considerable length and have gone through the record carefully.



8. The petitioner has been booked and charge-sheeted for commission of offence of repeatedly committing rape upon the prosecutrix after making promise to marry her and then retracting from the same. The offence of rape defined under Section 375 of IPC. It describes certain circumstances under which a man is said to commit rape. Relevant for the purpose of this case are first and second circumstance which are “against her will” and secondly “without her consent”. As per explanation II to Section 375 of IPC, 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 sexual specific act. Section 90 of IPC is also relevant as per which, a consent given by a person under fear of injury or under a misconception of fact is no consent in the eyes of law. Meaning thereby that where a person does not ‘consent’ to the sexual acts described in Section 375 of IPC, the offence of rape is committed.

9. The case of the petitioner is that he had never given any false promise to marry the prosecutrix. Rather he had performed roka ceremony with her and had introduced her to his family members and had even taken her to Goa for pre-wedding shoot and the physical relationship between them was consensual, therefore, no case for commission of offence of rape has been made out, whereas according to the prosecution, the petitioner infact did not intend to perform marriage with the prosecutrix at all and by giving a false promise to marry, had repeatedly committed rape upon her and therefore, the consent of the prosecutrix so obtained was vitiated by fraud. It



is common case of the petitioner and the prosecutrix that they had met through a social media platform for matrimonial alliance namely Shaadi.com. It has also come on record that their roka ceremony had been performed and the prosecutrix had been meeting and even visiting the house of the petitioner within the knowledge and consent of her parents. The prosecutrix was 25 years of age at the time when she came into contact with the petitioner and at the time when the petitioner firstly established physical relationship had been committed with her. She had been visiting and meeting the petitioner thereafter several times and this fact has not only been admitted by the prosecutrix herself but the record from different hotels as collected during the course of prosecution, is also showing so. The petitioner had been giving her assurance that he would perform marriage with her. Admittedly, even roka ceremony had been performed and they had gone for their pre-wedding shoot and as per the prosecutrix just thereafter, the petitioner had backed-out from his promise to marry. According to the petitioner, on finding some objectionable videos from the prosecutrix on social media platform, his parents had become disinclined to get his marriage performed with her and he was still willing to do so. The parties have been taking different stands. It is only on the basis of evidence to be produced before the learned trial Court that it can be concluded that the petitioner actually wanted to marry the victim or had malafide or had made a false promise to this effect only to satisfy his lust as alleged by the prosecutrix. The latter proposition falls within the ambit of cheating or deception. It is well settled that there is distinction between mere 'breach of



a promise' and 'not fulfilling a promise'. It has also to be seen that the prosecutrix agreed to have sexual intercourse with the petitioner on account of her love and passion for the petitioner and not solely on account of some misrepresentation made to him. In ***Deepak Gulati's case (supra)***, it was observed that if the accused on account of some circumstance which he could not have foreseen or which were beyond his control is unable to marry the victim, despite having every intention to do so, then such a case is to be treated differently and such an accused can be convicted for rape, only if a conclusion that his intention was *malafide* and he has clandestine motive,s is established. In this case, the prosecutrix being an adult person had adequate intelligence and maturity to understand the significance and morality associated with the sexual acts, she was consenting to the petitioner. Of course, she was conscious of the fact that the marriage had not taken place or may not take place due to some or the other reason as such. She established physical relationship with the petitioner without performance of marriage. It appears that due to the reason as explained by the petitioner, the parties have fallen apart. In '***Mandar Deepak Pawar Vs. The State of Maharashtra and another, 2022 (4) R.C.R. (Criminal) 274***', the Hon'ble Supreme Court has observed that such circumstance could happen to either of the parties both before or after marriage. A distinction has to be made between false promise to marry which is given on understanding by maker that it will be broken or breach of promise which is made in good faith but subsequently not fulfilled. It is difficult to impute to the petitioner knowledge of the fact that the prosecutrix had consented to maintain physical relationship with him as



a consequence of misconception of fact that had arisen on the basis of false promise to marry her. Since in this case, at this stage it cannot be made out that the promise to marry the prosecutrix which was given by the petitioner was false since the very inception with the intent to break it or it was a breach of promise made in good faith but subsequently not fulfilled, the consent to indulge in sexual relationship by the prosecutrix with the petitioner cannot be stated to be vitiated by fraud. The petitioner is in custody since 23.11.2023. The prosecutrix is yet to be examined. Therefore, it is a debatable question as to whether the allegations make out a case for commission of offence punishable under Section 375 of IPC.

10. As such, I am persuaded to hold that the petitioner deserves to be given concession of bail during pendency of trial. Hence, the petition is allowed and the petitioner is ordered to be released on bail subject to his furnishing personal/surety bonds to the satisfaction of the Chief Judicial Magistrate/ Duty Magistrate concerned.

11. It is clarified that observations made hereinabove shall not be construed as an expression of opinion on the merits of the case.

12. Since the main petition has been allowed, pending application if any is rendered infructuous.

[MANISHA BATRA]  
JUDGE

31<sup>st</sup> May, 2024  
Parveen Sharma

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|-------------------------------|---|----------|
| 1. Whether speaking/ reasoned | : | Yes / No |
| 2. Whether reportable         | : | Yes / No |