

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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CRM-M-11637-2024

Date of decision:11.03.2024

Naeem Sheikh alias Naeem Ud Din alias RizwanPetitioner

V/s

State of PunjabRespondent

CORAM: HON’BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Sunny K. Singla, Advocate for the petitioner.
Mr. Anup Singh AAG Punjab.

SUMEET GOEL, J. (Oral)

1. Present petition has been filed under Section 439 Cr.P.C. for grant of regular bail to the petitioner in case bearing FIR No.186 dated 30.12.2023, registered for the offences punishable under Sections 376(2)(n), 506 of IPC at Police Station City-1, Malerkotla, District Malerkotla.
2. The case set up in the FIR in question is as follows:-

“Copy of statement, Statement of Sabri daughter of Muhammad Rashid, resident of near Naudhrani Phatak, Gobind Nagar, Malerkotla, aged about 29 years, mobile number 98773- 99532. It is stated that I am a resident of above mentioned address and a house lady. I have studied up to 5th standard at Amanabad Madrasa Jamalpura Malerkotla. We are six brothers and sisters and out of which I am the eldest. My father died about 16 years ago. My mother is a housewife. About 9 years back, I had talks with Naeem Sheikh @ Rizwan son of Nizamuddin, resident of Madina Basti Malerkotla, who had promised me that he would marry me. He has been having physical relations with me at my house at Gobind Nagar Malerkotla at different times but repeatedly till now under the pretext of getting married to me. Apart from this, Naeem Sheikh has demanded money from me several times and so far I have given him about Rs.48,000/- at various times. Two days back from today I came to know that said Naeem Sheikh got married to another girl about two and a half years ago. When I talked to Naeem Seikh about this, he started threatening me and categorically refused to marry me. Even after getting married to another girl Naeem Seikh had sexual relations with me in November 2023.

The said Naeem Sheikh has cheated me by giving me the illusion of getting married and having sexual relations with me repeatedly and now he has cheated me by marrying another girl and legal action may be taken against him and justice be given to me. The statement given to you is read and heard and the same is correct. Sd/- Sabri, verified by Sd/- Gurpreet Kaur 69/SHO, Women Police Station Malerkotla. Dated 30.12.2023."

3. Learned counsel for the petitioner has argued that the petitioner is in custody since 30.12.2023 and investigation in the case is already complete. Learned counsel has further argued that a perusal of the FIR as also statement of the victim made under Section 164 of Cr.P.C. on 03.01.2024 would clearly reflect that the petitioner and the victim had consensual relationship and were even planning to married each other but the same could not fructify due to supervening circumstances. In order to buttress his arguments, learned counsel for the petitioner has relied upon the dicta of the judgment of Hon'ble Supreme Court in the case of ***Pramod Suryabhan Pawar vs. The State of Maharashtra & Anr.2019 AIR (Supreme Court) 4010***, relevant whereof reads as under:

"18. To summarise the legal position that emerges from the above cases, the "consent" of a women with respect to Section 375 must involve an active and reasoned deliberation towards the proposed act. To establish whether the "consent" was vitiated by a "misconception of fact" arising out of a promise to marry, two propositions must be established. The promise of marriage must have been a false promise, given in bad faith and with no intention of being adhered to at the time it was given. The false promise itself must be of immediate relevance, or bear a direct nexus to the woman's decision to engage in the sexual act."

In this view of the matter, learned counsel has prayed for grant of regular bail.

4. Learned State counsel has opposed the present petition arguing that the allegations raised are serious in nature and thus the petitioner does

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not deserve the concession of the regular bail. Learned State counsel seeks to place on record custody certificate dated 09.03.2024 in Court, which is taken on record.

5. I have heard counsel for the parties and have gone through the available records of the case.

6. The petitioner was arrested on 30.12.2023 whereinafter investigation has been carried out and challan stands presented on 21.02.2024. Total 13 prosecution witnesses have been cited and the culmination of the trial will take its own time to conclude. The rival contention of learned counsel for the parties; as to whether the relationship was established on basis of promise of marriage made by the petitioner which could not be fulfilled due to supervening circumstances; shall be gone into during the course of trial. This Court does not deem it appropriate to delve deep into these rival contentions, at this stage, lest it may prejudice the trial. Nothing tangible has been brought forward to indicate the likelihood of the petitioner absconding from the process of justice or interfering with the prosecution evidence. As per custody certificate dated 09.03.2024 filed by learned State counsel, the petitioner has already suffered incarceration for a period of more than 02 months & is not shown to be involved in any other case. Suffice to say, in the facts and circumstances of the case, further detention of the petitioner as an undertrial is not warranted.

7. In view of above, the present petition is allowed. Petitioner is ordered to be released on regular bail on his furnishing bail/surety bonds to the satisfaction of the Ld. concerned CJM/Duty Magistrate. However, in addition to conditions that may be imposed by the concerned CJM/Duty Magistrate, the petitioner shall remain bound by the following conditions:-

- (i) The petitioner shall not mis-use the liberty granted.
- (ii) The petitioner shall not tamper with any evidence, oral or documentary, during the trial.
- (iii) The petitioner shall not absent himself on any date before the trial.
- (iv) The petitioner shall not commit any offence while on bail.
- (v) The petitioner shall deposit his passport, if any, with the trial Court.
- (vi) The petitioner shall give his cellphone number to the Investigating Officer/SHO of concerned Police Station and shall not change his cell-phone number without prior permission of the trial Court/Illaqa Magistrate.
- (vii) The petitioner shall not in any manner try to delay the trial.

8. In case of breach of any of the aforesaid conditions and those which may be imposed by concerned CJM/Duty Magistrate as directed hereinabove or upon showing any other sufficient cause, the State/complainant shall be at liberty to move cancellation of bail of the petitioner.

9. Ordered accordingly.

10. Nothing said hereinabove shall be construed as an expression of opinion on the merits of the case.

11. Since the main case has been decided, pending miscellaneous application, if any, shall also stands disposed off.

(SUMEET GOEL)
JUDGE

March 11, 2024
Ajay

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