



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

214

CRM-M No.13706 of 2024
Date of Decision: 17.05.2024

Malkeet Singh ... Petitioner

Versus

State of Punjab and another ... Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Jasminder Singh Thind, Advocate,
for the petitioner.

Mr. Amandeep Singh Samra, AAG, Punjab,
for the respondent-State.

Mr. Shubham, Advocate,
for respondent No.2.

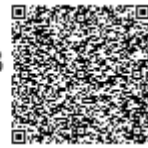
MANISHA BATRA, J.(Oral)

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

FIR No.	Police Station	Sections
106	Banur, District Patiala	376 (2) (n) and 506 of IPC

2. Brief facts of the case relevant for the purpose of disposal of the present petition are that on 14.08.2023, the victim got recorded her statement at Police Station Banur alleging therein that she was married with one “R” (name withheld) in the year 2015 and two children were born out of the said wedlock. Due to matrimonial discord between them, a petition for divorce was filed which was pending before the Court and she was residing at her parents’ house at Banur. She met the petitioner in

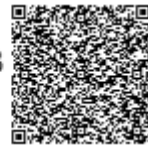
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the meanwhile through social media and conversation had also started between them through mobile phone. She alleged that in February 2023, on asking of the petitioner she had gone to meet him, was taken to a hotel and was subjected to forcible physical relations on the pretext of performing marriage and also by extending threats to kill her. Thereafter also, the petitioner ravished her several times by making promise to marry her. Initially, a zero FIR under Sections 376 (2) (n) and 506 of IPC was registered at Women Police Station, Ambala as the occurrence had taken place in the jurisdiction of Police Station Banur and thereafter, the aforementioned FIR was registered. Investigation proceedings were initiated. The victim was medically examined. Her statement under Section 164 of Cr.P.C. was got recorded before the Magistrate wherein she reiterated the same allegations as levelled at the time of recording of FIR. The petitioner was arrested on 26.12.2023. He was also medically examined. After completion of necessary investigation and usual formalities, challan was presented in the Court and presently, the petitioner is facing trial for commission of the aforementioned offences. He had moved an application for grant of bail before the learned trial Court which had been dismissed vide order dated 06.03.2024.

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. Infact, it was a case of consensual physical relationship between two adult persons. The prosecutrix had maintained relations with him as per her own wish and consent and no objection of any kind had been raised by her during the period from February 2023 till the date of lodging of the FIR

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They had even been living in live-in-relationship. A compromise has also been effected between them on 04.09.2023 and an affidavit was sworn by the prosecutrix in this regard. The trial is likely to take time. No useful purpose would be served by keeping the petitioner in custody any more. Therefore, it is argued that the petition deserves to be allowed.

4. Status report has been filed by the respondent-State as per which the allegations as levelled in the FIR stood established during the course of investigation and challan has been presented against the petitioner. The DNA report is awaited. The allegations against the petitioner are serious in nature. Therefore, it is argued that the petition does not deserve to be allowed.

5. It will not be out of place to mention here that the learned counsel for respondent No.2 during the course of arguments has admitted the factum of executing an agreement to live-in-relationship by the prosecutrix and the petitioner and also that the fact that she had sworn an affidavit. It is also submitted that a decree of divorce has been passed between the prosecutrix and her husband "R" on 23.02.2024.

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

7. The case as set up by the prosecution is that the petitioner induced the prosecutrix to enter into a relationship with him, made promise to marry her and took her to some hotel in February 2003 wherein she was subjected to rape by him and was extending threats and thereafter also she was ravished by him. The investigation has since been completed. The plea of the petitioner is that the parties were living in live-in-relationship and

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agreement (Annexure P-4) was also executed between them on 04.09.2023. During the course of arguments, the execution thereof has been admitted by learned counsel for the complainant. A copy of decree passed in the petition seeking dissolution of marriage of the prosecutrix with her husband by way of mutual consent is also placed on record which shows that the abovesaid petition was filed on 31.07.2023 and decided on 23.02.2024. Meaning thereby that the live-in-agreement was executed between the petitioner and the prosecutrix during the subsistence of her marriage with her husband and before passing of the decree of divorce. The prosecutrix herself was obviously not in a position to enter into matrimony with the petitioner, at that time and hence cannot be presumed to be induced under any misconception of fact. It is well settled that the consent of a woman under Section 375 of IPC, is vitiated on the ground of a “misconception of fact” where such misconception is the basis for choosing to engage in such act which cannot be stated to be the position in the present case. The trial is yet to be commenced and the material witnesses including the prosecutrix are yet to be examined. However, the allegations in the FIR even if taken on their face value make it a debatable question as to whether it was a case of consensual relationship between the parties or of rape, because the prosecutrix being an adult woman during the subsistence of her marriage is shown to have executed live-in-agreement with the petitioner and is also shown to have maintained continuous sexual relationship with him during the period from February 2023 till the date of lodging of FIR.

8. At the stage of considering the plea of petitioner for grant of bail though it is not feasible for the Court to draw any conclusion, much less

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to return any finding as to whether it was a case of consensual physical relationship or rape and this is also not the stage when this Court can decide such question, as such finding must await thorough assessment and evaluation of the evidence to be led by the parties at the trial but keeping in view the fact that prosecutrix’s counsel himself has admitted the factum of execution of live-in-agreement by the prosecutrix with the petitioner and has also admitted that an affidavit has been sworn by her in favour of the petitioner, the period spent by the petitioner and further the fact that there is nothing on record to show that there are any circumstances suggestive of petitioner’s fleeing from justice or thwarting the course of justice or creating other troubles in the shape of repeated offences and upon a conspectus of the foregoing considerations, this Court is persuaded to admit the petitioner to regular bail pending trial subject to his furnishing personal as well as surety bonds to the satisfaction of learned trial Court and subject to the condition that he shall not contact, visit or offer any inducement, threat or promise to any of the prosecution witnesses and especially the prosecutrix or her family in any manner whatsoever. The petition stands allowed.

9. It is made clear that nothing in this order shall be constructed as an expression of opinion on the merits of the case.

17.05.2024
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(MANISHA BATRA)
JUDGE

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