

**206 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-22111-2022 (O&M)

DATE OF DECISION : 08.02.2024

SANJAY DUTT

.. PETITIONER

V/S

STATE OF HARYANA

... RESPONDENT

CORAM: HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN

Present: Mr. Ashok Kumar Bhana, Advocate for the petitioner.

Ms. Mayuri Lakhanpal Kalia, DAG, Haryana.

Mr. Kamal Sharma and Mr. Raja Sharma, Advocates
for the complainant.

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HARPREET KAUR JEEWAN, J. (ORAL)

1. The instant petition has been filed under Section 438 Cr.P.C for grant of anticipatory bail to the petitioner in case FIR No. 049 dated 22.04.2022, under Sections 313, 34, 376(2)(n) and 506 of IPC, registered at Women Police Station, District Rohtak, Haryana.

2. It is the case of prosecutrix that she came in contact with the petitioner through Facebook and on the pretext of marrying with the prosecutrix, the petitioner called her at Rohtak bus stand. However, she was taken to a hotel and forcibly her rape was committed. It is further alleged that the petitioner made a video clip and threatened the prosecutrix to defame her. It is further in allegation that pregnancy of the prosecutrix was terminated as the petitioner gave her some medicine, which was consumed by her.

3. As per the order dated 30.05.2022, the parties were referred to mediation. It was observed by the Co-ordinate Bench that though the mediation was not successful, however, both the parties were present and on interaction with the parties, it was observed that they are ready to marry each other. However, there were some issues. The parties were again sent back to the Mediation centre.

4. The mediation was not successful and following order was passed on 05.08.2022:

“xxxx As per submissions made before this Court, the FIR was lodged by the prosecutrix on the basis of the allegations that the petitioner entered into physical relationship with her by extending a promise of marriage to her. However, after exploiting her, he backed out from the promise made and hence, she had no alternative than to lodge the FIR for committing the rape upon her.

Learned counsel for the petitioner submits that the petitioner and the prosecutrix both are major and they were in consensual relationship from last so many years. Though, he made the promise of marriage to the prosecutrix, however, he is still ready to honour the promise made to her. He has relied upon the judgments titled as Mandar Deepak Pawar Vs. The State of Maharashtra and another (CRA-442/2022) decided on 27.07.2022 and Ansaar Mohammad Vs. The State of Rajasthan and another, 2022 LiveLaw (SC) 599 and submitted that no offence under Section 376 IPC is made out in view of the law settled. Learned counsel has also submitted that the prosecutrix has also exploited the similarly situated Army Personnel and she is habitual litigant. He has placed on record some documents from the Facebook in which the phone number of the prosecutrix is used showing that prosecutrix by different name has falsely implicated the petitioner and other army personnels.

Learned counsel for the complainant on the other hand submits that the prosecutrix was exploited by the petitioner on the basis of the false promise and as the consent has been taken by the misconception of fact, the offence under Section 376 IPC is straightway attracted. Learned counsel has submitted that he has some audio recording of the petitioner in this case. He submits that the petitioner has fabricated the forged documents from

Facebook to wriggle out of the case. He has submitted that the petitioner has left no stone unturned in assassinating the character of prosecutrix. He submits that the documents relied upon by the petitioner be thoroughly investigated. However, he is directed to hand over the same to the IO concerned for investigating the same.

Learned State counsel has submitted that offences are specific and serious and the case is pending investigation as the interim order granted by this Court is to the effect that no coercive action be taken against the petitioner.

On joint request, the parties were referred to the Mediation Centre time and again by this Court as both of them made a request for amicable settlement to perform the marriage. However, the same did not succeed. The Court is convinced that there is no possibility of any amicable settlement in this case.

The petitioner is Army Personnel and is posted in J&K. The petitioner has also supplied the copy of the documents from Facebook to learned State counsel. In the facts and circumstances of the case, the Court is of the opinion that the matter needs to be thoroughly investigated including the documents provided by counsel for the petitioner to the State. Learned counsel for the complainant has also submitted that he would also provide the audio recording of the petitioner and other material to State counsel for investigation purpose.

The interim order dated 20.05.2022 is modified to the extent that in the event of arrest, the petitioner shall be released on interim bail subject to the satisfaction of the Arresting Officer/Investigating Officer. The petitioner shall join investigation before the Investigating Agency/Officer on 09.08.2022 at 11:00 AM. He shall abide by the following conditions as envisaged under Section 438(2) Cr.P.C.:-

1. That the petitioner shall make himself available for interrogation by a police officer as and when required to do so.

2. That the petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the court or to any police officer.

3. That the petitioner shall not leave India without prior permission of the court.

The investigating agency would file a detailed exhaustive report after joining the petitioner and disclosing outcome of the investigation, taking into consideration all the abovesaid material provided by the parties on the next date of hearing.”

5. Learned counsel for the petitioner contends that the petitioner has joined the investigation in pursuance of the order dated 05.08.2022.

6. Learned State counsel has also confirmed that the petitioner has joined the investigation. Fresh status report by way of affidavit of Sunil Kumar, Deputy Superintendent of Police, State Crime, Panchkula along with the documents, Annexure R-1 to R-7 have been filed today on behalf of the State, which is taken on record.

7. Learned State counsel has opposed the bail application on the ground of gravity of allegations. However, confirmed the fact that as per the status report, prosecutrix could not produce any hospital/laboratory records or any other document regarding her pregnancy and medical termination of pregnancy. It was further contended that on 10.10.2023, prosecutrix was called by the Investigating Officer for her medical examination qua the allegations of abortion and the opinion of the doctor was sought. As per the opinion of the doctor dated 10.10.2023, Annexure R-6, no such document was produced. It was further contended that the offence under Section 313 IPC has already been deleted by the District Police, Rohtak.

8. Learned counsel for the complainant has opposed the bail application on the ground of gravity of allegations. It was contended that serious offence has been committed. As such, the petitioner is not entitled for the concession of anticipatory bail.

9. I have considered the aforesaid contentions. As per the allegations of the complainant, the prosecutrix came in contact with the accused through social media and the petitioner promised to marry her and had sexual intercourse with her several times. The allegations that the prosecutrix became pregnant and the accused gave her tablets for termination of pregnancy, as a result the miscarriage occurred, is not supported with any medical records during the investigation. The prosecutrix is major, her medical examination has been conducted, her statement under Section 164 Cr.P.C. has also been recorded. The petitioner is working in Indian Army. There is no apprehension of absconding the petitioner.

10. The petitioner has joined the investigation. His custodial interrogation is not required by the Investigating Agency.

11. In view of the aforesaid facts and circumstances and in view of the reasons recorded in the order dated 05.08.2022, the present petition is allowed and the order dated 05.08.2022 granting interim bail to the petitioner is made absolute, subject to the conditions laid down in Section 438(2) Cr.P.C.

08.02.2024

Janki

(HARPREET KAUR JEEWAN)**JUDGE***Whether speaking/reasoned : Yes/No**Whether reportable : Yes/No*