

Neutral Citation No.2024:PHHC:015831

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRM-M No.26231 of 2022
Date of decision: 05.02.2024

Vikas ... Petitioner

Vs.

State of Haryana and another ... Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Neeraj Yadav, Advocate,
for the petitioner.

Mr. Neeraj Poswal, AAG, Haryana.
for the respondent-State.

Mr. Ashish Yadav, 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.26, dated 15.03.2022, registered under Sections 498-A, 406, 506, 354-A and 34 of IPC (Section 377 of IPC, Sections 4 and 6 of Protection of Children from Sexual Offences Act, 2012 (For short “POCSO Act”) and Sections 9, 10 and 11 of the Prohibition of Child Marriage Act, 2006 (For short “Act, 2006”) as added later on), at Women Police Station, Rewari (Haryana).
2. Brief facts relevant for the purpose of disposal of this petition are that the aforementioned FIR was initially registered under Sections

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498-A, 406, 506, 354-A and 34 of IPC on the basis of written complaint filed by respondent No.2-complainant alleging therein that she got married with the present petitioner on 05.06.2021 whereas her elder sister “A” (name withheld) was married with accused Vineet, brother of the present petitioner on 18.07.2021. It was submitted that sufficient dowry articles were given at the time of marriage but only some days thereafter, the complainant and her sister were being taunted by the petitioner and his family members for bringing less dowry. They asked for transfer of a plot which was in the name of her sister “A” or otherwise to pay a sum of Rs.20 lacs in the shape of dowry. She alleged that on instigation of his parents, the petitioner and his brother used to beat them. Her father-in-law was keeping evil eye upon herself and her sister and used to come to their rooms when they were alone and inappropriately and forcibly touched her sister and herself. They had made complaint about this fact to their mother-in-law and husbands but they did not pay any heed. While alleging that on 21.08.2021 also, the father-in-law of the complainant tried to do some wrong act with her by entering into her room, she prayed for taking action against them and also for return of the dowry articles.

3. After registration of the FIR under the aforementioned sections i.e. Sections 498-A, 406, 506, 354-A and 34 of IPC, investigation proceedings were initiated. The complainant recorded her statement under Section 164 of Cr.P.C. before the Magistrate on 16.03.2022 alleging therein that after sometime of her marriage, her husband had started molesting her and pressurizing her to do unnatural sexual acts and

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on her resistance, he used to threaten her to send her back to her parents house. She further alleged that her husband also used to harass her physically and even her father-in-law misappropriately touched her private parts by keeping an evil eye upon her. She further recorded that on 20.10.2021, her mother had come to bring her to her parental home but the petitioner did not let her do so and rather she was threatened. Her mother somehow managed to take her back home on the next day and since then she was staying with her mother. The complainant was medically examined during the course of investigation and it was found that she was a minor having 17 years of age. The offences under Section 377 of IPC and Sections 4 and 6 of POCSO Act and Sections 9 to 11 of Act, 2006 were added subsequently. Investigation is going on. The present petitioner had moved an application for grant of anticipatory bail before the Court of learned Additional Sessions Judge, Rewari but the same had been dismissed vide order dated 27.05.2022.

4. It is submitted in the petition and learned counsel for the petitioner has argued that he has been falsely implicated in this case. The allegations as to raising demand of dowry or as to commission of offence punishable under Section 406 of IPC have not been made out as against him as general, omnibus and vague allegations have been levelled against him in this regard. Neither the offence under Section 354-A of IPC is attributed to him. He has submitted that no case for commission of offence of aggravated penetrative sexual assault upon the complainant has been made out against him as it was a case of arranged marriage. At

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the time of his marriage with the complainant, he was not at all aware that she was a minor and not major nor this fact had been disclosed by the complainant or her family members. He has further argued that his marriage with the complainant can be declared voidable at the instance of the complainant herself but that cannot be stated to be a ground for booking him for commission of offences under Sections 4 and 6 of POCSO Act. It is also argued that while recording her statement under Section 164 of Cr.P.C., the complainant made material improvements in her statement from the allegations as levelled in the FIR so as to implicate him under the provisions of POCSO Act.

5. Learned counsel for the petitioner has further argued that the family of the complainant is of suspicious antecedents as her elder sister “A” was married with the brother of the petitioner but the fact that she had performed 5-6 marriages earlier had been concealed by family members of the complainant. While pointing towards Annexure P-3 which is copy of a decree of divorce shown to be obtained by elder sister of the complainant from one Harjinder on receipt of a sum of Rs.5 lacs and Annexure P-4 which is an affidavit shown to be sworn by her sister affirming that she was married to one Rampal and a compromise was effected between them, he argued that this fact itself showed that the family of the complainant was involved in blackmailing and harassing others by performing marriages and then blackmailing and extracting money from them. He has also argued that the provisions of Sections 9 to 11 of Act, 2006 are also not at all attracted against him. He is ready to

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join the investigation. His custodial interrogation is not required. Therefore, it is argued that the petition deserves to be allowed.

6. The respondent had filed status report submitting therein that initially a case under Sections 406, 498-A, 506 and 354-A read with Section 34 of IPC was registered on the basis of complaint filed by the complainant and it was on the basis of her statement recorded under Section 164 of Cr.P.C. that the offences under Section 377 of IPC and Sections 4 and 6 of POCSO Act and Sections 9, 10 and 11 of the Act, 2006 were added. Learned State counsel assisted by learned counsel for respondent No.2 has argued that there are serious allegations against the petitioner. His custodial interrogation is required for thorough investigation in the matter. Hence, he has argued that the petition does not deserve to be allowed.

7. I have heard learned counsel for the petitioner and learned State counsel assisted by learned counsel for respondent No.2 at considerable length and have gone through the record carefully.

8. On going through the record including the contents of the FIR as alleged by the complainant, it is evident that there is no dispute about the fact that the marriage of the petitioner with the complainant had been performed on 05.06.2021 as arranged marriage and in accordance with requisite rites and ceremonies. It is also not in dispute that the elder sister of the complainant who was a divorcee, was married with the elder brother of the petitioner as on 18.07.2021. On a bare perusal of contents of the FIR, it is revealed that the present petitioner had initially been

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booked for commission of offences punishable under Sections 498-A, 406, 506, 354-A and 34 of IPC only. So far as Section 406 of IPC is concerned, the same provides punishment for committing offence of criminal breach of trust as defined under Section 405 of IPC. As per Section 405 of IPC, any person having entrusted with property, or with any dominion over property, if dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property, commits "criminal breach of trust". It is well settled proposition of law that the basic requirement to bring home the accusations under Section 405, is the requirement to prove conjointly (i) entrustment and, (ii) whether the accused was actuated by dishonest intention or not, misappropriated it or converted it to his own use to the detriment of the person who entrusted it. In the absence of proof of entrustment of property or of dominion over the property, this section does not apply. In the instant case however, there is not even a whisper in the FIR that any property/istridhan as belonging to the complainant had been entrusted to the present petitioner at the time of her marriage with him or subsequently and the petitioner had criminally misappropriated the same and converted it to his own use. Therefore, in my considered opinion, no prima facie case for commission of offence punishable under Section 406 of IPC has been made out as against the petitioner.

9. Further, so far as Section 498-A of IPC is concerned, it has been alleged in the FIR that the members of in-laws family of the complainant had started giving taunts to her sister and herself shortly

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after the marriage on account of bringing less dowry and also raised demand for transferring a plot which was in the name of her sister “A” in their name or to give a sum of Rs.20 lacs. However, the allegations so made are shown to be general, vague and omnibus in nature as it is not mentioned in the FIR as to which particular accused had raised what demand and on which particular date, month and year. More so, even while believing the allegations as levelled in the FIR in this regard to be correct on the face of record, no case for custodial interrogation of the petitioner for commission of this offence has been made out.

10. It will be relevant to mention now that subsequently after recording of statement of the complainant under Section 164 of Cr.P.C., offences under Section 377 of IPC and Sections 4 and 6 of POCSO Act and Sections 9 to 11 of Act, 2006 had been added as against the petitioner and the co-accused. The medico legal report does not show that any unnatural act of sexual intercourse against the order of nature had been committed with the complainant. Neither the specific date and instance of commission of such offence has been mentioned. The petitioner was lawfully married with the complainant. It is submitted by learned counsel for the petitioner that neither he was aware nor it was disclosed to him that the complainant was minor at the time of her marriage. No doubt, committing of act of sexual intercourse with a minor even with her consent amounts to commission of offence of penetrative sexual assault. However, in the peculiar circumstances of this case when the marriage between the parties had been arranged by their own family

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members, it cannot be stated that the act of sexual intercourse was committed by the petitioner upon her without her consent and while knowing that she was not major at that time. Therefore, this is also a debatable question which is to be decided on the basis of evidence to be produced during trial including the evidence as to the age of the complainant.

11. Then so far as the offences under Sections 10 and 11 of Act, 2006 are concerned, the same cannot be stated to be invoked as against the present petitioner on the face of record as neither he was parent or guardian or person having charge of the complainant nor it was he who had conducted, directed or abetted performance of marriage with the complainant. Rather it were the parents of the complainant who should have been booked and tried for commission of offences under these two sections. Keeping in view all these facts and circumstances, I am of the considered opinion that this is a fit case where benefit of anticipatory bail must be given to the petitioner. With these observations, I allow this petition and the petitioner is granted concession of anticipatory bail subject to the condition that he would surrender before the Investigating Officer within a period of 15 days from today and shall join investigation as and when required and in that eventuality, the Investigating Officer/Arresting Officer shall release him on bail, on furnishing personal/surety bonds to his satisfaction by the petitioner. The petitioner shall also abide by the conditions as envisaged under Section 438(2) of the Code of Criminal Procedure and also subject to the following

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conditions:-

- (i) The petitioner shall cooperate with the investigation and shall appear before him as and when required.
- (ii) He 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.

12. In case of violation of any of the above conditions, the jurisdictional Court shall be empowered to consider the application for cancellation, if any, and pass appropriate orders in accordance with law.

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

05.02.2024
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(MANISHA BATRA)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No