

2024:PHHC:087061



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

209

CRM-M-32242 of 2024

Vikas Kumar @ Vikas

.....PETITIONER

VERSUS

State of Haryana

.....RESPONDENT

CORAM: HON'BLE MS. JUSTICE **NIDHI GUPTA.**

Present: Mr. P.S. Chauhan Advocate for petitioner (through VC).

Ms. Deepshikha Chauhan, AAG Punjab.

NIDHI GUPTA., J (ORAL)

Prayer in this first petition filed under Section 439 Cr.P.C. is for grant of regular bail to the petitioner during pendency of the trial in case of FIR No. 0019 dated 31.1.2014, under Section 376(2)(n), 406 and 506 IPC, 1860, registered at Police Station Sector 6, Dharuhera, District Rewari (Haryana).

Learned counsel for the petitioner *inter-alia* submits that the FIR was registered on the basis of statement of victim herself which reads as follows:

“To SHO PS Sector 6 Dharuhera Sir, it is requested that I Sapna d/o of Rajpal resident of Kehdki Daula, I am a divorced women and I have a son also. In the year 2020 I started talking with mobile number 9560165601, the said mobile number 9560165601 belongs to Vikas son of Rohtash resident of Rajpura District Rewari. The very first time when I talked with Vikas then he told me that he is a divorced man and he wants to marry me. For around 6 months I used to talk with Vikas on phone call. After that Vikas asked me to come at his flat at Sector 6 Dharuhera. On the asking of Vikas I went at Sector 6 Dharuhera where he made sexual relationship with me on the pretext of marriage and after that many a times he called at at his flat at Bhiwadi also and there

also he made sexual relations with me. After that in Delhi also he made sexual relations with me. My divorce was finalized on 14.2.2023 and in that divorce I got alimony of Rs.16,00,000/-. Vikas used to transfer the amount of money which I used to receive from my ex-husband as maintenance amount from the year 2021 to 2023, my ATM card was also kept by the said Vikas in his possession. Vikas has also taken away my Gold neck chain and my gold ear rings on the pretext of need of money. After that on the asking of Vikas I bought him a Double Bed, Sofa and LCD which were kept by Vikas in his Rewari Flat. When I asked Vikas to get married then he told me that till now his divorce is not finalized and thus he cannot marry me. When I asked Vikas to return my money then he flatly refused to reply the same and told me that I have some obscene pictures of yours and through them I can defame you. Vikas also has a bike registered under my name bearing registration number HR26EY6756, which is kept by Vikas at his house. Whenever I used to ask Vikas to reply my money when he threatens to kill me and my son and he used to say do whatever you can do but I will not repay your money. Thus, it is requested from you to take legal action against him.”

Learned counsel for the petitioner states that in actual fact the petitioner and complainant were in consensual relationship for four years. The complainant was married at the time. This is admitted by the complainant in the FIR wherein she has stated that in the year 2020 she entered into a relationship with the petitioner and her divorce was finalized on 14.2.2023. It is contended that as such it is clear it was a consensual relationship and no rape was committed upon the complainant. It is also argued that it could not have been a false promise of marriage on part of the petitioner in view of the fact that the complainant was already married on the date on which she entered into a relationship with the petitioner.

In support, learned counsel for the petitioner refers to the judgment of Hon'ble the Supreme Court in ***Vinod Gupta Versus State of Madhya Pradesh and another, 2024(3) SCC 496***, wherein in para-8 it reads as under:

“8. From the contents of the complaint, on the basis of which FIR was got registered and the statement got recorded by the complainant, it is evident that there was no promise to marry initially when the relations between the parties started in the year 2017. In any case, even on the dates when the complainant alleges that the parties had physical relations, she was already married. She falsely claimed that divorce from her earlier marriage took place on 10.12.2018. However, the fact remains that decree of divorce was passed only on 13.01.2021. It is not a case where the complainant was of an immature age who could not foresee her welfare and take right decision. She was a grown up lady about ten years elder to the appellant. She was matured and intelligent enough to understand the consequences of the moral and immoral acts for which she consented during subsistence of her earlier marriage. In fact, it was a case of betraying her husband. It is the admitted case of the prosecutrix that even after the appellant shifted to Maharashtra for his job, he used to come and stay with the family and they were living as husband and wife. It was also the stand taken by the appellant that he had advanced loan of ₹1,00,000/- to the prosecutrix through banking channel which was not returned back.”

Learned counsel for the petitioner further refers to judgment of Hon'ble the Supreme Court in *Ansaar Mohammad Versus State of Rajasthan and another*, Law Finder Doc ID#2012650; *Mandar Deepak Pawar Versus The State of Maharashtra and another* Law Finder Doc ID # 2019902; *Sonu @ Subhash Kumar Versus State of Uttar Pradesh and another* Law Finder Doc Id# 1815957; *Pramod Suryabhan Pawar Versus The State of Maharashtra and another* Law Finder Doc Id#1566356; *Harmanjot Singh Versus State of Punjab* Law Finder Doc Id # 2006962 and *Akshay Manoj Jaisinghani Versus The State of Maharashtra* Law Finder Doc ID #825043.

Learned State counsel has filed custody certificate dated 11.7.2024 as per which the petitioner is in custody and undertrial for 3

months and 22 days. Learned State counsel on instructions informs that challan in the present case was filed on 14.5.2024: charges were framed on 1.7.2024; next date of hearing before the trial Court is 25.7.2024 when the prosecution evidence will commence and as on date out of 17 prosecution witnesses, none has been examined.

Without commenting upon the merits of the case, however, keeping in view the totality of facts and circumstances of the case, including: (a) the period of custody undergone by the petitioner; (b) perusal of custody certificate reveals that there is no case against the present petitioner; (c) that the evidence has not yet started and therefore conclusion of trial will take considerable time. As such, further custody of the petitioner may not be justified. Accordingly, without meaning any expression of opinion on the merits of the case, it is ordered that the petitioner-Vikas Kumar @ Vikas be released on regular bail subject to his furnishing requisite bail bonds/surety bonds to the satisfaction of the trial Court/Duty Magistrate, concerned.

The present petition is allowed.

(NIDHI GUPTA)
JUDGE

12th July, 2024
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Whether speaking/reasoned	Yes
Whether reportable	No