

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

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CRM-M No.36945 of 2023
Date of decision: 01.02.2024

Jasmeet Singh @ Jassi ... Petitioner

Vs.

State of Punjab ... Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Harmandeep Singh Saini, Advocate,
for the petitioner.

Mr. M.S. Nagra, AAG, Punjab,
for the respondent-State.

MANISHA BATRA, J.(Oral)

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.0089, dated 08.08.2022, registered under Sections 376 and 506 of IPC at Police Station Shimlapuri, Police Commissionerate, Ludhiana, District Ludhiana.

2. Brief facts relevant for the purpose of disposal of this petition are that the aforementioned FIR was registered on the basis of statement recorded by the prosecutrix “P” (name withheld) who stated that

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previously she was married with one “U” (name withheld) in the year 2004 and two children were born out of the wedlock. After ten years of marriage, her husband had left her and a litigation regarding their divorce was pending. She was earning livelihood by working in a parlour. She got acquainted with the petitioner from last some years. She alleged that one day the petitioner had taken her to his house and committed sexual intercourse with her. From the last 4-5 years he had been maintaining physical relations with her by using force and also used to extend threats to her. He had subjected her to sexual intercourse for the last time in the month of July 2022. On 02.08.2022, he came to her house and while physically assaulting her, he had snatched her phone. She prayed for taking action against him. After registration of FIR, investigation proceedings have been initiated. The petitioner had moved an application for grant of anticipatory bail before the Court of learned Additional Sessions Judge, Ludhiana which had been dismissed vide order dated 15.07.2023.

3. The present petition has been filed by the petitioner on the grounds and it has been argued that he has been falsely implicated in this case. Infact, the prosecutrix was residing in the same locality and she used to ask him for helping her as she had matrimonial dispute with her husband and on her asking, he used to do odd jobs for her. It is submitted that in the first week of August 2022, the petitioner had been called by the prosecutrix for some work. On his reaching there, he found her house to be locked, therefore, he had made inquiries about her from her tenant

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Monu living on the ground floor, who had made a call in his presence from his phone to the prosecutrix and at that time, he noticed that the abovesaid Monu had saved the mobile number of the prosecutrix as his “wife” and the photographs of both of them was shown as Display Picture (DP). On asking, the said Monu disclosed to him that he had intimate relationship with the prosecutrix and they were going to solemnize marriage. It is submitted that the petitioner had apprised the above Monu about the fact that the prosecutrix was having a matrimonial dispute with her husband and a dispute had thereafter arisen between the prosecutrix and the abovesaid Monu and feeling offended, she entangled him in this case as her affair with the abovesaid Monu had broken up because of the petitioner. It is submitted that the allegations in the FIR are false on the face of the same because if the petitioner was subjecting her to forcible act of sexual intercourse from the last 4-5 years then why she did not report the matter to the police after those episodes and why she preferred to lodge FIR only after 02.08.2022, when the incident as narrated above had taken place. It is also submitted that there is no medical evidence on record to show that the prosecutrix had been ravished by the petitioner and, therefore, it has been submitted that he deserves to be given concession of bail.

4. Status report had been filed by the respondent-State as per which the prosecutrix was medically examined and her statement under Section 164 of Cr.P.C. was recorded on 17.08.2022 wherein the prosecutrix is shown to have stated that the petitioner had firstly called

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her in his house by extending threats and then had forcibly maintained physical relations with her and from the last 4-5 years, he had been committing rape upon her. It is also submitted that he has joined the investigation on 22.10.2023 and his custodial interrogation is not required. However, it is submitted by learned State counsel that offence alleged against the petitioner is serious in nature therefore, the petition does not deserve to be allowed.

5. I have heard learned counsel for the petitioner as well as learned State counsel at considerable length and have gone through the record carefully.

6. The petitioner is alleged to have subjected the prosecutrix who is 31 year old adult female having two children and a broken marriage, to rape from the last 4-5 years before lodging of FIR. It is also alleged by her that the petitioner had lastly ravished her in the month of July 2022. On going through the allegations in the FIR, it is also revealed that she herself stated that she used to visit the house of the petitioner by her own vehicle and also admitted that as on 02.08.2022, the petitioner had come to her house in her absence and had met the abovesaid Monu. She further alleged that he had assaulted her physically and also snatched her mobile phone. No specific dates, months and years when the petitioner had subjected the victim to rape for the first time and thereafter had, however, been mentioned in the complaint and even the date when he had physical relations with her in the month of July 2022 has not been mentioned. The very allegation that she was having physical relations with the petitioner,

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prima facie reveal this case to be a case of consensual physical relationship and not of rape. It is relevant to mention at this stage that the offence of 'rape' as defined under Section 375 of IPC sets out certain circumstances. Relevant for the purpose of this case, is the second circumstance that a male subjecting a female to sexual intercourse without her 'consent', commits offence of rape. As per Explanation-2 of Section 375, 'consent' means an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non verbal communication, communicates willingness to participate in the specific sexual act. Section 90 of IPC is also relevant as per which a 'consent' given by a person under fear of injury, or under a misconception of fact, and if the person doing the act knows, or has reason to believe, that the consent was given in consequence of such fear or misconception, is not consent. Therefore, the consent of a woman with respect to Section 375 must involve an active and reasoned deliberation towards the proposed act.

7. The gravamen of the allegations in the FIR as filed by the prosecutrix in this case is not that the petitioner had made any promise to marry her and on that pretext, she had allowed him to have physical relations with her or that there was any breach of such promise on his behalf. Rather, the specific allegations are that from the last 4-5 years, he had been forcibly maintaining physical relations with her. On the basis of these allegations, it cannot be stated at the first blush that any forcible act(s) of sexual intercourse had been committed by the petitioner.

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Though the petitioner has denied any consensual sexual relationship between the parties at all, however, even while believing the version of the prosecution that they were having physical relations from the lasts 4-5 years to be true, it is a highly debatable question as to whether the present one can be stated to be a case of rape falling within the definition of Section 375, punishable under Section 376 of IPC. The petitioner has since joined investigation. Neither his custodial interrogation is required nor any recovery is to be effected from him as such, in my considered opinion, the order of grant of bail dated 10.10.2023 deserves to be absolute. It is ordered accordingly. The present petition is allowed and the order dated 10.10.2023 granting interim bail to the petitioner is made absolute, subject to the conditions laid down in Section 438(2) of the Code of Criminal Procedure and also subject to the following conditions:-

- (i) The petitioner shall cooperate with the investigation and shall appear before the investigating agency as and when required.
- (ii) He shall not directly or indirectly make any inducement, threat or promise to the prosecution or any other 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.
- (iii) He shall not commit any similar offence while on bail.

8. 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.

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

01.02.2024
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(MANISHA BATRA)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No