

2024:PHHC:000459

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

202

CRM-M-45547-2023

Date of decision: 05.01.2024

Gurlal Singh Mall

...Petitioner

V/s

State of Punjab

...Respondent

CORAM: HON’BLE MR. JUSTICE SUMEET GOEL

Present: Mr. P.S. Ahluwalia, Advocate with
Mr. Kehat Dhillon, Advocate for the petitioner.
Mr. Gurlal Singh Dhillon, AAG Punjab.
Mr. Jagmeet Singh Moudgill, Advocate for the complainant.

SUMEET GOEL, J.

1. Present petition has been filed under Section 439 Cr.P.C. for grant of regular bail to the petitioner in case bearing FIR No.245 dated 28.12.2022 (Annexure P-1), registered for the offences punishable under Sections 376(2) (n) and 420 IPC and Section 66 (E) of the IT Act, 2000 at Police Station Sadar Ludhiana, District Police Commissionerate, Ludhiana, District Ludhiana.
2. Custody certificate dated 03.01.2024 has been filed in Court, which is taken on record.
3. The case set up in the FIR in question is as follows:-

“Today, complaint bearing number CR No.2371198 dated 15.06.2022 made by Diya Kaushal daughter of Arun Kaushal resident of H.No.9B, Gali No.05, Hira Bagh, Patiala was received through dak for registration of case FIR against Gurlal Singh Mal son of Gurmukh Singh Mal resident of Village Baghora, Ghanaur, District Patiala for forcibly committing rape upon complainant by giving allurements of marriage, blackmailing the complainant by taking obscene photographs, issuing threats of life etc. and for imparting justice to the complainant. The contents of the same are as under, "To, The Commissioner of Police, Ludhiana regarding

imparting justice by restoring complaint No.2325042 dated 04.05.2022, the subject of which is as under: request for registration of case FIR against Gurlal Singh Mal son of Gurmukh Singh Mal resident of Village Baghora, Ghanaur, District Patiala, Mobile No.95928-47348, 959299358 and Amrinder Singh son of Jarnail Singh resident of Ward No.2, Ghanaur, Patiala, Mobile No.98147-47111 for committing forcibly rape in Hotel Royal Mapple, Pakhowal Road, Ludhiana with complainant by giving allurements of marriage to complainant since beginning and for imparting justice. Sir, it is submitted that I, Diya Kaushal aged about 23 years daughter of Sh. Arun Kaushal, am a resident of H.No.9-B, Gali No.5, Hira Bagh, Patiala and submit as under; (1) That I am a resident of above said address. I had given a complaint bearing UID No.2325042 dated 04.05.2022 for registration of case FIR against Gurlal Singh, Amrinder Singh. The hearing of the said complaint was done in Women Cell, Rishi Nagar, Ludhiana where accused Gurlal Singh, Amrinder Singh came present in Women Cell, Rishi Nagar, Ludhiana and the police had initiated action against accused. But in the meantime, above said accused in collusion with one another allured the complainant and accused Gurlal Singh gave his consent to me that he would immediately solemnize marriage with me, that I should get closed the complaint made against him. At this I again fell into the trap of above said accused and agreed to solemnize marriage with accused in order to make my life better. Due to this reason, I had made a statement to police officers in connection with the complaint given by me but as soon as the police filed the complaint given by me, accused Gurlal Singh backed out from performing marriage with me. Now, accused are threatening me that earlier they had given consent by compromising the matter due to fear of police but now in case I initiated any action against them then they would get conducted my recce and get me killed. Sir, I now want to get registered case FIR against accused and initiate legal action against them." The contents of the complaint given by complainant are as under:- "About 3 years ago Gurlal Singh had met complainant in Punjabi University, Patiala where the complainant was taking coaching of her graduation. During that time above said Gurlal Singh contacted the complainant and got acquainted with the complainant and on the pretext of talking about coaching, he took the mobile phone number of complainant. (3) That thereafter, above said Gurlal Singh while talking with the complainant over mobile phone started saying that he wanted to have friendship with complainant because he had fallen in love with complainant at first sight. During this period accused Gurlal Singh while talking to complainant over phone started saying that he is unmarried and he would lead his matrimonial life after

solemnizing marriage with the complainant. That complainant fell into the trap of accused and by believing him started talking with him as friend. That from the year 2019 to year 2021, accused Gurlal Singh started meeting and roaming with complainant and by giving the allurements of marriage to complainant, started pretending the love and also started taking photographs with the complainant. In the year 2021, complainant completed her graduation and the complainant talking to Gurlal Singh regarding marriage whereupon the accused started putting her off on one pretext or the other. That in the end of year 2021, complainant talked to accused Gurlal Singh a number of times for solemnizing marriage with her. During this period accused also introduced one of his accomplice Amrinder Singh by mentioning about his friendship. He started saying to the complainant through Amrinder Singh that complainant should spend some more time with him as friends and after persuading his parents he would solemnize marriage with the complainant. That in the month of February 2022, on repeated asking of the complainant, accused Gurlal Singh took the complainant to his house. On that day nobody was present in the house of accused Gurlal Singh and accused Gurlal Singh by giving false assurance of marriage to complainant tried to establish physical relations with her against her will and when complainant objected to this wrong act of Gurlal Singh aforesaid, Gurlal Singh started giving solace to complainant that after marriage it becomes a general thing and stopped the complainant to initiate any type of action. 7. That in the second week of April, 2022, complainant again asked accused Gurlal Singh to solemnize marriage with her and to settle the matrimonial life, whereupon accused started saying to complainant that he had made all arrangements for solemnizing the marriage with complainant and to keep her with him and firstly he would solemnize marriage with complainant by taking her to Ludhiana and later after persuading his parents, would take the complainant to his house. 8. That on 22.04.2022, accused Gurlal Singh after taking along his accomplice Amrinder Singh, took complainant to Royal Mapple Hotel, Pakhowal Road, Ludhiana from Patiala at about 12.30 P.M in his vehicle No. PB-11-AZ-1756, where under a pre-planned conspiracy, accused Gurlal Singh go booked Room No. 102 in Hotel Royal Mapple by giving his ID proof and stated that he had made all arrangement of marriage there and after solemnizing marriage with complainant, he would take her to his house that day. Accused sent his accomplice Amrinder Singh by saying in presence of complainant that he should bring Pandits etc. in room of hotel. During that period, accused Gurlal Singh established physical relations with complainant forcibly by saying that after solemnizing the marriage, he would take her to his house

that day. During that period, accused took the complainant in his arms inside room of hotel by alluring her and put his hand in her internal parts and after removing the clothes, panty, bra from her person, physically exploited the complainant and in order to black-mail her, took her obscene photographs and prepared movie also. Complainant kept on waiting for Pandit called by accused, but after waiting for a long time, his accomplice Amrinder Singh entered in the room of hotel under a pre-planned conspiracy hatched by Gurlal Singh and stated that Pandit had refused to come to Hotel that day and he would get solemnized the marriage of complainant with accused Gurlal Singh some other day. 10. That complainant had a suspicion on malafide intention of accused Gurlal Singh and his accomplice Amrinder Singh, whereupon complainant made inquiries at her own level and came to know that accused Gurlal Singh is already married and he has one son aged 6 years namely Karman Partap Singh Mal. Accused Gurlal Singh wanted to satisfy his physical lust with complainant from the beginning and physically exploited complainant for about 3 years by giving allurement of marrying her and has ruined the life of complainant. That thereafter complainant talked to accused Gurlal Singh regarding committing of cheating with her, whereupon accused Gurlal Singh started giving threats to complainant that if complainant made a complaint against him or approached any police officer, then he would made viral the obscene photographs and video of complainant and would defame the complainant and his family members socially. Therefore, it is requested that complaint No. 2325042 dated 04.05.2022 may again be restored and case FIR be registered against accused Gurlal Singh Mal son of Gurmukh Singh Mal, resident of Bagora, Ghanaur, District Patiala, Mobile No. 95928-47348, 9592993548 and Amrinder singh son of Jarnail Singh, resident of Ward No. 2, Ghanaur, Patiala, Mobile No. 98147-47111 for committing rape upon the complainant forcibly in Hotel Royal Mapple, Pakhowal Raod, Ludhiana by giving allurement of marriage, black-mailing the complainant by taking obscene photographs and issuing threats of life and justice be imparted to the complainant. Thanking you. Complainant. Sd/- Diya Kaushal, Diya Kaushal aged about 23 years, daughter of Sh. Arun Kaushal, resident of H.NO. 9-B, Gali No. 5, Hira Bagh, Patiala. Mobile No. 76528-17213." Assistant Commissioner of Police East, Ludhiana conducted enquiry into the complaint who wrote in his enquiry report as under, "During enquiry into the complaint made by Diya Kaushal daughter of Arun Kaushal resident of H.No.9-B, Gali No.5, Hira Bagh, Police Station Urban Estate, District Patiala it has been found that complainant Diya Kaushal was studying in Punjabi University, Patiala about 3 years ago where she was

taking coaching of graduation and where she met Gurlal Singh son of Gurmukh Singh resident of Village Baghora, District Patiala and Gurlal Singh established acquaintance with Diya Kaushal and while talking with her took mobile number of Diya Kaushal. Thereafter, Gurlal Singh started making phone calls to Diya Kaushal and allured Diya Kaushal that he wanted to have friendship with her. Thereafter, Gurlal Singh express his love to Diya Kaushal and stated that he is unmarried and wanted to marry her. At this Diya Kaushal fell into his trap and from the year 2019 to year 2021 Gurlal Singh started meeting and roaming with Diya Kaushal. Thereafter, in the year 2021, Diya Kaushal completed her study from Punjabi University. During this period when Diya Kaushal talked with Gurlal Singh regarding solemnizing of marriage, then Gurlal Singh putting her off on the one pretext or the other and asked Diya Kaushal to wait for some more time by saying that he would persuade his parents and solemnize marriage with Diya Kaushal soon. Thereafter, Gurlal Singh kept on making efforts to establish physical relation with Diya Kaushal and in the second week of April 2022, complainant Diya Kaushal asked Gurlal Singh to solemnize marriage who told Diya Kaushal that he had made full arrangement to solemnize marriage, firstly he would take her to Ludhiana and solemnize marriage there with her and thereafter would take her to his parents' house. On 22.04.2022, Gurlal Singh along with his friend Amrinder Singh took Diya Kaushal from Patiala at about 12:30 PM in vehicle No.PBAZ-1756 and brought her to Royal Mapple Hotel, Pakhowal Road, Ludhiana and got booked a room in Royal Mapple Hotel. Gurlal Singh sent his friend Amrinder Singh from there and told Diya that Pandit and other material would come there. Thereafter, Gurlal Singh established physical relations with Diya Kaushal and also clicked her photographs. In this connection the photographs produced by the complainant are attached herewith. When complainant asked Gurlal Singh about marriage, he stated that Pandit had refused to come that day and sent Diya Kaushal to home by putting her off. Later complainant Diya Kaushal kept on asking repeatedly Gurlal Singh about marriage but he kept on putting her off. At his complainant had a suspicion on Gurlal Sinigh and she made enquiries at her own level and came to know that Gurlal Singh is already married. As such Gurlal Singh son of Gurmukh Singh resident of Village Baghora, District Patiala establish physical relations with complainant Diya Kaushal by not disclosing about his marriage and by taking her into allurement. Therefore, case FIR under Section 376/420 IPC is required to be registered against Gurlal Singh and to conduct investigation." After taking opinion of DA Legal on the complaint, recommendations was made to initiate further action by Station

House Officer, Police Station Division No.5, Ludhiana and report was sent to Additional Deputy Commissioner of Police, Zone-4, Ludhiana who sent the complaint to ADCP-2 Ludhiana as the occurrence related to Zone No.2 Ludhiana. At this JCP Rural wrote as under, "Sir, today, As M 6-12-2022, the complainant, Diya Kaushal came present to the office of under. She admitted that the alleged accused Gurlal Singh had made videos of private acts with his phone without has consent. She provided a pendrive in which such a photograph was seen. As such it is recommended that Section 66E of IT Act may be involved and the aspect to be hecked in detail during the investigation, once case is registered."

4. Learned counsel for the petitioner has argued that the petitioner as also the prosecutrix were in a consensual relationship, the petitioner as also the prosecutrix are major in terms of age apart from being educated and the facts/circumstances of the case exhibit that there is no coercion by the accused-petitioner forcing the complainant to enter into a sexual relationship. It is further submitted that the investigation by the Police is already complete, challan was presented on 17.04.2023 and the trial is underway.

5. Learned State counsel as also counsel for the complainant have opposed the present petition arguing that the allegations raised are serious in nature and thus the petitioner does not deserve the concession of the regular bail.

6. I have heard counsel for the parties and have gone through the records of the case.

7. The petitioner as also the prosecutrix are in relationship since the year 2019; the charges framed by the learned trial Court reflect that the accused (petitioner herein) has been arraigned for commission of offences under Sections 376/420 IPC & 66(E) of the IT Act; challan has already been presented on 17.04.2023, there are 13 prosecution witnesses out of which

none has been examined till date; the prosecution also filed an application under Section 319 Cr.P.C. for summoning of one Amrinder Singh as additional accused which came to be allowed by the learned trial Court. The next date of hearing before the trial Court has been fixed as 04.01.2024 for appearance of said Amrinder Singh. The prosecutrix is stated to be about 20 years of age when she entered into the relationship in the year 2019 as also the prosecutrix is well educated & there is no tangible material available on record to reflect likelihood of the petitioner absconding from the process of justice or interfering with the prosecution evidence.

8. The Hon'ble Supreme Court in judgment titled as ***Pramod Suryabhan Pawar vs. The State of Maharashtra & anr. 2019(4) RCR (Criminal) 135***, has held as under:-

12. This Court has repeatedly held that consent with respect to Section 375 of the IPC involves a active understanding of the circumstances, actions and consequences of the proposed act. A individual who makes a reasoned choice to act after evaluating various alternative actions (c inaction) as well as the various possible consequences flowing from such action or inaction, consen to such action. In Dhruvaram Sonar which was a case involving the invoking of the jurisdiction under Section 482, this Court observed:

"15... An inference as to consent can be drawn if only based on evidence or probabilities of the case. "Consent" is also stated to be an act of reason coupled with deliberation. It denotes an active will in mind of a person to permit the doing of the act complained of."

*This understanding was also emphasised in the decision of this Court in **Kaini Rajan v. State of Kerala, 2013(4) RCR (Criminal) 365: (2013) 9 SCC 113:***

"12... "Consent", for the purpose of Section 375, requires voluntary participation not only after the exercise of intelligence based on the knowledge of the significance of the moral quality of the act but after having fully exercised the choice between resistance and asset. Whether there was consent or not, is to be ascertained only on a careful study of all relevant circumstances."

13. This understanding of consent has also been set out in Explanation 2 of Section 375 (reproduced move). section 3(1) (w) of the SC/ST Act also incorporates this concept of consent:

"3(1) (w) -

(i) intentionally touches a woman belonging to a Scheduled Caste or a Scheduled Tribe, knowing that she belongs to a Scheduled Caste or a Scheduled Tribe, when such act of touching is of a sexual nature and is without the recipient's consent;

.....

Explanation.-For the purposes of sub-clause (i), the expression "consent" means an unequivocal voluntary agreement when the person by words, gestures, or any form of non-verba communication, communicates willingness to participate in the specific act:

Provided that a woman belonging to a Scheduled Caste or a Scheduled Tribe who does not offer physical resistance to any act of a sexual nature is not by reason only of that fact, is be regarded as consenting to the sexual activity:

Provided further that a woman's sexual history, including with the offender shall not imp consent or mitigate the offence;"

9. In view of totality of factual matrix of the present case, the instant petition is allowed. Petitioner is ordered to be released on regular bail on his furnishing bail/surety bonds to the satisfaction of the Ld. concerned CJM/Duty Magistrate. However, in addition to conditions that may be imposed by the concerned CJM/Duty Magistrate, the petitioner shall remain bound by the following conditions:-

- (i) The petitioner shall not mis-use the liberty granted.
- (ii) The petitioner shall not tamper with any evidence, oral or documentary, during the trial.
- (iii) The petitioner shall not absent himself on any date before the trial Court.
- (iv) The petitioner shall not commit any offence while on bail.
- (v) The petitioner shall deposit his passport, if any, with the trial Court.
- (vi) The petitioner shall give his cellphone number to the Investigating Officer/SHO of concerned Police Station and shall not change his cell-phone number without prior permission of the trial Court/Illaq Magistrate.
- (vii) The petitioner shall not in any manner try to delay the trial.

10. In case of breach of any of the aforesaid conditions and those which may be imposed by concerned CJM/Duty Magistrate as directed

hereinabove or upon showing any other sufficient cause, the State/complainant shall be at liberty to move cancellation of bail of the petitioner.

11. Ordered accordingly.
12. Nothing said hereinabove shall be construed as an expression of opinion on the merits of the case.
13. Since the main case has been decided, pending miscellaneous application, if any, shall also stands disposed off.

(SUMEET GOEL)
JUDGE

January 05, 2024
Ajay

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