

Neutral Citation No. 2024:PHHC:036445

**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

209

CRM-M-46946-2023 (O&M)

Date of decision: 14.03.2024

Baljit Singh

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Amit Kumar Saini, Advocate
for the petitioner.

Ms. Ruchika Sabherwal, Sr. DAG, Punjab.

Mr. Rajesh S. Dadwal, Advocate
for the complainant.

MANISHA BATRA, J. (Oral)

1. Through the instant petition, filed under Section 438 of Code of Criminal Procedure, 1973, the petitioner seeks anticipatory bail in case FIR No. 0243, dated 0307.2023, under Sections 376, 420, 406 of the IPC at Police Station City Hoshiarpur, District Hoshiarpur.

2. Brief facts of the case relevant for the purpose of disposal of the present petition are that the aforementioned FIR was registered on the basis of complaint filed by the complainant/prosecutrix 'R' (*name withheld*) 03.07.2023 alleging therein that she was working as Operation Manager at Bajaj Allianz Insurance Company, Amritsar and came into contact with petitioner on 11.05.2022, when he had come to her office. They had exchanged their phone numbers. Thereafter, the petitioner contacted the prosecutrix on 13.05.2022 and 16.05.2022. He even came to visit her house.

He again visited her thereafter twice in the month of May, 2022 and stayed

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there for some days. He represented to her that he intended to marry her and had told about this fact to his family members and even asked the prosecutrix to talk about his proposal with her mother. She alleged that he even performed a *roka* and ring ceremony with her on 05.06.2022. Though he had told earlier that his family members would be coming but none had come at that time. As per allegations further raised by her, some days after ring ceremony, the petitioner extracted cash amount of Rs. 3 Lakh, then Rs. 30,000/- and another amount of Rs. 1 Lakh from her. He even took loan of Rs. 35,000/- from IDFC Bank in her name. He took her to Shimla and his behaviour had changed there as he physically assaulted her, forcibly ravished her and remained irritated. On becoming suspicious, the prosecutrix made inquiries and was shocked to know that the petitioner was already married and was having kids too. While alleging that he had ravished her on the pretext of performing marriage with her and had extorted money from her and converted the same to his own use, she prayed for taking action him. After registration of the FIR, investigation proceedings have been initiated. The petitioner had filed an application for grant of anticipatory bail before the Additional Sessions Judge, Hoshiarpur but the same had been dismissed, vide order dated 25.08.2023 (Annexure P-5).

3. Learned counsel for the petitioner has submitted that the prosecutrix was a married lady, aged about 37 years at the time of incident and was even having a child. She had entered into relationship with the petitioner while fully knowing that he too was a married person having a child. He was younger than the prosecutrix. The prosecutrix had refused to even get herself medically examined. Present FIR has been lodged by her only

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with the purpose to harass and to put pressure on the petitioner to accede to her demands. The petitioner has joined investigation. His custodial interrogation is not required. No recovery is to be effected from him. He has roots in the society and has a permanent abode. There are no chances of his fleeing from justice. With these broad submissions, it is argued that the petitioner deserves to be given benefit of pre-arrest bail. In support of his contentions, learned counsel for the petitioner has placed reliance upon authorities cited as ***Sumit Kumar vs. State (Govt) of NCT of Delhi : 2016(3) JCC 2180, Baldev Raj vs. State of Himachal Pradesh : 2015(3) RCR (Criminal) 1050 and Javed Hussain vs. State of Haryana : 2020(4) Law Herald 2841.***

4. *Per contra*, learned counsel for the complainant/prosecutrix has contended that the petitioner induced the prosecutrix to enter into physical relationship with him and cheated her by concealing the fact that he was already married. He even performed *roka*/ring ceremony with her to show a positive commitment from him towards his marriage with the prosecutrix. She had maintained physical relationship with him fully because of his promise to marry her. She is a divorcee. The promise was broken by the petitioner. Rather, he had made her to enter into physical relationship with him with ill intention since the very inception of their relationship to sexually exploit her as he himself knew that he was a married person. It is contended that the allegations against the petitioner are serious in nature. His custodial interrogation is required and, therefore, it is urged that the present petition is liable to be dismissed.

5. Status report has been filed. Learned State has submitted that the petitioner has joined investigation 08.12.2023 in pursuance of order passed by this Court. However, it is also contended that the allegations in the FIR are of very serious nature. The investigation is at nascent stage. Custodial interrogation of the petitioner is required to unravel the truth and, therefore, it is argued that the petitioner ought not to be granted the benefit of pre-arrest bail.

6. I have heard learned counsel for the parties at considerable length and have also gone through the material placed on record.

7. Hon'ble Supreme Court in ***Prasanta Kumar Sarkar vs. Ashis Chatterjee and another : 2010 (4) RCR (Criminal) 909*** had laid down the following principles, while deciding a petition for bail:

- “(i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;
- (ii) nature and gravity of the accusation;
- (iii) severity of the punishment in the event of conviction;
- (iv) danger of the accused absconding or fleeing, if released on bail;
- (v) character, behaviour, means, position and standing of the accused;
- (vi) likelihood of the offence being repeated;
- (vii) reasonable apprehension of the witnesses being influenced; and
- (viii) danger, of course, of justice being thwarted by grant of bail.”

8. Subsequently, in a celebrated pronouncement of Hon'ble Supreme Court cited as ***Siddharam Satlingappa Mhetre vs. State of Maharashtra and others : 2011 (1) RCR (Criminal) 126***, the parameters for

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grant of anticipatory bail had been succinctly laid down by making the following observations:

“122. The following factors and parameters can be taken into consideration while dealing with the anticipatory bail :

- i. The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;
- ii. The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence;
- iii. The possibility of the applicant to flee from justice;
- iv. The possibility of the accused's likelihood to repeat similar or the other offences.
- v. Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her.
- vi. Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people.
- vii. The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role of the accused in the case. The cases in which accused is implicated with the help of sections 34 and 149 of the Indian Penal Code, the court should consider with even greater care and caution because over implication in the cases is a matter of common knowledge and concern;
- viii. While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors namely, no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused;
- ix. The court to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;
- x. Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of

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there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.

123. The arrest should be the last option and it should be restricted to those exceptional cases where arresting the accused is imperative in the facts and circumstances of that case.”

9. While applying the above discussed position of law and on taking into consideration the facts and circumstances as discussed by both the sides in this case, it emerges that the prosecutrix is a married woman with one child and at the time of incident was about 37 years of age. She is a divorcee. She has alleged that the petitioner had induced her to enter into physical relationship with him on the pretext of performing marriage with her and even performed *roka*/ring ceremony with her 05.06.2022. On the mere *ipse dixit* that the prosecutrix has placed on record some photographs showing them to be in intimate positions and a photograph showing that some ceremony having taken place (which might probably be *roka*/ring ceremony), but without there being anything to establish at this stage that the incident of subjecting her to forcible rape as alleged by her, it cannot be stated that the petitioner should be denied any protection. The petitioner has already joined the investigation. No recovery is to be effected from him. His custodial interrogation is not required. No doubt, the offence which is alleged to be committed by him is serious but the question as to whether there was in fact a promise to marry and the consent for physical relationship was given by the prosecutrix only because of any commitment made by the petitioner that he would marry her and further that the promise so made was fake right from the beginning are such questions, which are to be established only when the prosecutrix steps

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into the witness box and leads evidence. These matters are to be decided only in trial. The petitioner herein has no criminal antecedents.

10. Taking into account the entire facts and circumstances, I am inclined to hold that the order dated 09.10.2023, whereby the petitioner has been extended benefit of interim bail, deserves to be made absolute and the petition deserves to be allowed, subject to conditions as envisaged under Section 438(2) Cr.P.C. and that:

1. He shall appear before the Investigation Officer/Arresting Officer within a period of ten days from today and furnish bonds to his satisfaction;
2. He shall join investigation as and when called for;
3. He shall not directly or indirectly contact the prosecutrix, her family members or any other person/witness acquainted with the facts of the case and in case of receipt of any complaint from the prosecutrix in this regard, the protection granted by this Court shall stand cancelled.

11. However, it is made clear that the observations made herein are only for the purpose of deciding the present petition and the same shall not be construed as an expression of opinion on the merits of the case.

14.03.2024

(MANISHA BATRA)
JUDGE

Waseem Ansari

Whether speaking/reasoned

Yes

Whether reportable

Yes