



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

247

CRM-M No.60169 of 2024
Date of decision : 20.12.2024

VishalPetitioner
Versus
State of HaryanaRespondent

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Sandeep Saini, Advocate, for the petitioner

Ms. Ankita Ahuja, AAG Haryana

SUMEET GOEL, J. (ORAL)

1. Present petition has been filed under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short 'BNSS') for grant of regular bail to the petitioner in case FIR No.70 dated 9.5.2024, under Sections 342, 365, 506 and 376 (2)(N) of the IPC, registered at Women Police Station, Jind, District Jind.
2. The case set up in the FIR in question (as set out in the present petition by the petitioner) is as follows:-

'To, The Station House Officer Police Station Women Jind. Sir, it is requested that I Priyanka daughter of Joginder am a resident of Azad Nagar Colony Narwana. Around one year back I became friends with Vishal Shanki Tanwar Kohinoor on the Instagram. Slowly- slowly we became friends amongst ourselves. Vishal is a resident of Sharma Colony Bhiwani Road Bypass. Vishal allured me in the trap of love and said that I will marry you. Vishal started talking with me on my phone



no.8571046433 from his phone no.9416119077 and I do not remember the date in the month of January called me to Jind 2/3 times by calling me and called me opposite of New Bus Stand Jind and took me forcibly to a hotel in front of New Bus Stand. Vishal did wrong thing with me by alluring me in regard to marriage. After that Vishal started issuing threats and by issuing threat of life to me continued to call me in the hotel in front of New Bus Stand Jind and continued to do wrong thing with me forcibly. After that I asked Vishal in regard to marrying me then Vishal refused. After that Vishal started verbally abusing me on the phone and after that my parents fixed my match in Village Kaloti District Jind Tehsil Safidon then Vishal sent photos and recording of conversations between us to my would be husband due to which my relation got broken. After that Vishal started verbally abusing me on the phone and used to say that I will not let your match get fixed at any place. After that I had blocked the phone number of Vishal. I am requesting you that strict legal action be initiated against Vishal so that I get justice. SD/- Hindi Priyanka Priyanka daughter of Joginder resident of Azad Nagar Colony Narwana Mobile No.8571046433 dated 09.05.2024.'

3. Learned counsel for the petitioner has argued that the petitioner is in custody since 15.5.2024. Learned counsel has further argued that the victim was already married whereas the petitioner is un-married and therefore, it cannot be said that there was any false promise of marriage at the instance of the victim. In order to buttress her arguments, learned counsel for the petitioner has relied upon the judgment passed by this Court in a case of '**Sanjay Kumar Sharma Vs. State of Haryana and Another**'; **2024:PHHC:080609**, relevant whereof reads as under:

"14. As a sequel to the above said discussion, the following postulates emerge:

I. The Consent of a woman; in context of Section 375 of IPC, 1860; must involve an active and reasoned deliberation towards the proposed act.

II. For a court to hold that the "Consent" of a woman was



marred by 'misconception of fact' on account of a promise to marry; it must emerge from the factual conception of a given case that, firstly such promise was false from inception itself with no intention to upkeep it and secondly, such false promise must be of immediate relevance in terms of time or bear a direct nexus to the woman's decision to engage in physical relation(s).

III. In a case pertaining to rape, based upon promise to marry and/or involving extra marital relationship (wherein the man or woman or both are married to other persons), the Court ought to take into account the entirety of facts/circumstances of such case, including but not limited to, comparative age of accused and victim; educational, social and economic background of the accused and the victim; the nature of professional work/avocation being undertaken by accused and victim in their respective lives etc. It is neither axiomatic nor fathomable to lay any exhaustive set of guidelines in this regard as every case has its own peculiar factual matrix."

Learned counsel for the petitioner has further submitted that the victim has refused to undergo medical examination which further substantiate the cause of the petitioner. Learned counsel has further relied upon the photographs (copies whereof are appended as Annexure P-3 with the instant petition) to substantiate the case of the petitioner that there was consensual relationship between the petitioner and the victim itself.

4. Learned State counsel has opposed the present petition by arguing that the allegations raised are serious in nature and thus the petitioner does not deserve the concession of the regular bail. Learned State counsel seeks to place on record custody certificate dated 19.12.2024 in Court, which is taken on record.

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

6. The petitioner was arrested on 15.5.2024 whereinafter



investigation was carried out and challan stands presented on 3.7.2024. Total 14 prosecution witnesses have been cited out of which only 2 have been examined till date. It is not in dispute that testimony of the victim stands recorded as prosecution witness and culmination of trial will take its own time. The rival contention of learned counsel for the parties; as to whether there was consensual relationship between the petitioner and the victim; the affect of the victim being earlier married on the case in hand, weightage/veracity required to be attached to the photographs (copies whereof have been appended as Annexure P-3 with the instant petition) as also the refusal at the instance of the victim to undergo medical examination; shall be gone into during the course of trial. This Court does not deem it appropriate to delve deep into these rival contentions, at this stage, lest it may prejudice the trial. Nothing tangible has been brought forward to indicate the likelihood of the petitioner absconding from the process of justice or interfering with the prosecution evidence.

As per custody certificate dated 19.12.2024 filed by learned State counsel, the petitioner has already suffered incarceration for a period of seven months and five days.

As per the said custody certificate, the petitioner is stated to be involved in two other FIRs. Indubitably, the antecedents of a person are required to be accounted for while considering a regular bail petition preferred by him. However, this factum cannot be a ground sufficient by itself, to decline the concession of regular bail to the petitioner in the FIR in question when a case is made out for grant of regular bail *qua* the FIR



in question by ratiocinating upon the facts/circumstances of the said FIR. Reliance in this regard can be placed upon the judgment of the Hon'ble Supreme Court in *Maulana Mohd. Amir Rashadi v. State of U.P. and another, 2012 (1) RCR (Criminal) 586*; a Division Bench judgment of the Hon'ble Calcutta High Court in case of *Sridhar Das v. State, 1998 (2) RCR (Criminal) 477* & judgments of this Court in *CRM-M No.38822-2022* titled as *Akhilesh Singh v. State of Haryana*, decided on 29.11.2021, and *Balraj v. State of Haryana, 1998 (3) RCR (Criminal) 191*.

Suffice to say, further detention of the petitioner as an undertrial is not warranted in the facts and circumstances of the case.

7. In view of above, the present 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.
- (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 cell-phone 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/Illaqa Magistrate.

(vii) The petitioner shall not in any manner try to delay the trial.

8. 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.
9. Ordered accordingly.
10. Nothing said hereinabove shall be construed as an expression of opinion on the merits of the case.

(SUMEET GOEL)
JUDGE

20.12.2024
Ashwani

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