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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-112-2025
Date of decision: 20.01.2025

RAM NIWAS

...Petitioner(s)

VERSUS

STATE OF HARYANA

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

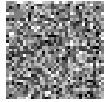
Present:- Ms. Promila Nain, Advocate and
Ms. Harveen Mehta, Advocate for the petitioner.

Mr. Vishal Kashyap, DAG, Haryana.

Mr. Parveen Kaushik, Advocate for the complainant.

JASGURPREET SINGH PURI, J. (Oral)

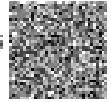
1. The present petition has been filed under Section 482 of the BNSS, 2023 for the grant of anticipatory bail to the petitioner in FIR No.469 dated 05.11.2024, under Sections 376 and 506 of the IPC, registered at Police Station Ganaur, District Sonipat, Haryana.
2. Learned counsel for the petitioner submitted that it is a case where there had been an abuse of the process of law at the hands of the prosecutrix-complainant with connivance of the police. She further submitted that the allegations against the petitioner were that he was the neighbour of the prosecutrix-complainant and in the year 2020 at the onset of COVID-19 pandemic, allegedly the petitioner and the prosecutrix-complainant came in touch with each other and they established physical relationship and as per the



allegations, the petitioner on the false pretext of promise to marry had established continuous physical relationships with the prosecutrix-complainant. She further submitted that the prosecutrix-complainant is of the age of 49 years and is a widow and is also having two grown up sons and evidently on the face of it, the relationship was a consensual relationship between the parties although allegations were that the petitioner had stated to the prosecutrix-complainant that he is a widower and had promised to marry her but thereafter, there has been a breach of promise. She further submitted that after about 4 years, the present FIR was lodged in the year 2024 because the relations between the parties turned sour and in order to blackmail and exploit, the present FIR was lodged, which is an abuse of the process of law.

3. Learned counsel for the petitioner also submitted that even when the medical examination of the prosecutrix-complainant was conducted, nothing adverse was found except for a report that sexual assault cannot be ruled out. She further submitted that the prosecutrix-complainant is a lady of the age of 49 years and such kind of report was totally vague and nothing was attributable to the petitioner. She referred to the judgments passed by Hon'ble Supreme Court in ***Mahesh Damu Khare versus the State of Maharashtra and another, 2024 SCC Online SC 3471*** and ***Ansaar Mohammad versus the State of Rajasthan and another, Criminal Appeal No.962 of 2022 (@ SLP (Crl.) No.5326 of 2022)*** to contend that in such a situation where the prosecutrix is a fairly matured lady having matured understanding, registering of such kind of FIRs is an abuse of the process of law.

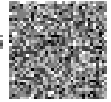
4. Learned counsel for the petitioner further submitted that the basic allegation against the petitioner was that he had wrongly stated to the



prosecutrix-complainant that he is a widower, whereas in fact the prosecutrix-complainant herself attended the marriage of the son of the petitioner in the year 2022, regarding which even photographs have been attached alongwith the present petition as Annexure P-2 and not only this, even the marriage of the son of the prosecutrix-complainant was attended by the petitioner and in this way, it cannot be said that they were not aware about the marital status of each other and the physical relationship, if at all, was established then the same was established with their consent but now the prosecutrix-complainant has taken a u-turn by making false allegations with regard to the same, which amounts to the abuse of the process of law.

5. Learned counsel for the petitioner also submitted that one of the allegations in the FIR was that the petitioner had taken obscene photographs and video of the prosecutrix-complainant in the year 2020, whereas there is no allegation that any such photographs and video had been misutilized by the petitioner, whereas in fact the true position is that the petitioner has never taken any photographs and video of the prosecutrix-complainant at any point of time and allegations against him were wrong. She further submitted that she has specific instructions from the petitioner to state that in the event of joining the investigation by the petitioner, he will immediately surrender his mobile phone, which he had been using for the last 5 years with the Investigating Officer promptly or within a time frame work as so directed by this Court so that the mobile phone can be sent to the forensic laboratory in this regard to ascertain the truth.

6. On the other hand, Mr. Vishal Kashyap, DAG, Haryana has filed a status report dated 17.01.2025 in the Court today and the same is taken on



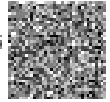
record. While referring to the aforesaid status report, he submitted that there are serious allegations against the petitioner and the petitioner is a serving police official although living in the neighbourhood of the prosecutrix-complainant but as per the allegations, he on the false pretext of marriage had established physical relationships with the prosecutrix-complainant and thereafter, resiled from the same and not only this, he had allegedly taken photographs and video of the wrongful act being committed in this regard.

7. Learned counsel for the complainant has opposed the grant of anticipatory bail to the petitioner on the ground that the prosecutrix-complainant was made to understand by the petitioner that he is a widower and wanted to marry her and in this way, he established physical relationships with the prosecutrix-complainant but later on resiled from the same and misused the prosecutrix-complainant in this regard. He submitted that apart from the above, the petitioner also tried to blackmail the prosecutrix-complainant by recording her obscene photographs and video in his own mobile phone and therefore, he does not deserve the concession of anticipatory bail.

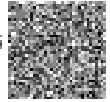
8. I have heard the learned counsels for the parties.

9. The FIR which was lodged against the petitioner and so attached with the present petition as Annexure P-1, is reproduced as under:-

“To The SHO Sahib, Police Station Gannaur, District Sonipat, Subject:- Complaint for necessary legal action against Ram Niwas, ASI Delhi Police, resident of in front Lehri Singh Park, in front of temple, Shastri Nagar, Ghanur, Tehsil Gannaur, District Sonipat, Mobile 9540326688, 9416669318. Sir, The applicant prays as under:- 1. That I Anita widow of Prem is permanent resident of Gali No.11,



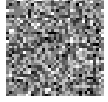
New Basant Vihar, Gannaur, Tehsil Gannaur, District Sonipat. 2. That I was earlier residing in Narela and to earn livelihood I was working in Maharaja Harish Chander Hospital on contract basis, where I came in contact with accused Ram Niwas and he being police official he increase equations with me and took my phone number from me and every week used to talk to me. In the year 2016, i sold my plot through my relative and purchased house New Basant Vihar, Gannaur and started residing with my both sons. Accused asked me that in case of anything is required in Gannaur then without hesitation it may be informed and started visiting my house. 3. That accused had been continuously visiting my house and accused Ram Niwas used to tell that his wife had already died and children has become major. Ultimately, the accused succeeded in winning over my and sons confidence, as such, he kept on visiting my house till 2020, in March, 2020 there was lockdown in the complete country and on last Sunday of last week in April, 2020, the accused visited my house and at that time, my sons were not present in the house and taking benefit of this, the accused raped forcibly saying that his wife is no more and you are also widow, as such, we will marry with each other and he saved the video clip of sexual intercourse with me in his phone and assured me that he will never ditch the complainant in the life but the accused started blackmailing me, saying that if I will not come to meet him, he will show the video to my sons. 4. That being one widow and fear of society wherever the accused called me I used to go there and whenever Ram Niwas got chance he forcible made relation at my house. Accused Ram Niwas used to make relation with me. Accused Ram Niwas being police official used by creating influence on me was forcible making relation and whenever in the evening he used to come for



evening walk in Lehri Singh Park then he used to call and at the time of darkness in the street of crematorium, near Tower he used to make relation. And in April, 2020, the accused called me in park near tower in the night and made forcible relation with me under construction abandoned house. When I objected the accused gave fist blow on my mouth, resultantly, my one tooth was broken. I am widow lady and to save my respect I was quite and did not tell my sons. After sometime, the complainant came to know that the wife of accused is alive, then she visited the office of the accused, where she was ousted extending threat saying that he will talk tomorrow. 5. That on 17.08.2024 at about 03:00 PM accused visited my house and told me and when I asked him that she alive, his wife is not alive and I am exploited then he show my video of my relations and raped me by giving threat. 6. That accused being police official kept on committing rape on me for the last four years on the pretext of marrying me and on 16.09.2024 Ram Niwas telephonically threatening me and his wife threatened me that if any action is taken against Ram Niwas then both her sons shall be murdered or they will be implicated in false case and sent to jail. Like this me and my sons are under the threat of their life, therefore, Sahib it is requested strict legal action will be taken against accused Ram Niwas and be got punished with rigorous imprisonment and justice be done to me. I shall be thankful. Sd/- Anita widow of Prem, resident of Gali No.11 New Bansant Vihar Gannaur, Tehsil Gannaur, District Sonipat Mobile 84473-42888 dated 17.09.2024."

10. As per the allegations, the prosecutrix-complainant had alleged that under the false pretext of marriage the petitioner had established physical relationships with her from the year 2020. The present FIR is of the year 2024.

One of the allegations against the petitioner is that it was so stated by the

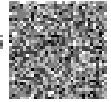


petitioner that he is a widower and wanted to marry the prosecutrix-complainant and another allegation is that he took obscene photographs and video of the prosecutrix-complainant in his own mobile phone in the year 2020 for the purpose of blackmailing her.

11. During the course of arguments, learned counsel for the petitioner submitted that it is not a case that the prosecutrix-complainant was of any immature understanding, whereas she is a widow of the age of 49 years having two grown up sons and the petitioner had rather attended the marriage of one of the sons of the prosecutrix-complainant and apart from the above, even the prosecutrix-complainant had attended the marriage of the son of the petitioner in the year 2022 and it was very clear between the parties that they were married earlier and having children. So far as the use of mobile phone by the petitioner for the purpose of taking photographs and video of the prosecutrix-complainant is concerned, learned counsel for the petitioner has specifically stated on instructions from the petitioner that the same were never taken by him nor the same have ever been utilized because the allegations were that the video was made in the year 2020 and till date, no such video has come to light. Learned counsel for the petitioner has also specifically stated on instructions from the petitioner that the petitioner will forthwith surrender and deposit his mobile phone with the Investigating Agency for the purpose of investigation in an appropriate manner.

12. Reference in this regard can be made to the judgment of Hon'ble Supreme Court in ***Mahesh Damu Khare's case (Supra)***. Relevant paras of the aforesaid judgment are reproduced as under:-

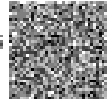
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“27. Thus, from the above it appears that it is more of an extra-marital affair during the aforesaid period without any insistence by the complainant for getting married to the appellant. The fact that the complainant continued to have a physical relationship for a long time without any insistence on marriage would indicate the unlikelihood of any such promise made by the appellant for marrying her and it rather indicates that the relationship was a consensual one. In our opinion, the longer the duration of the physical relationship between the partners without protest and insistence by the female partner for marriage would be indicative of a consensual relationship rather than a relationship based on false promise of marriage by the male partner and thus, based on misconception of fact.

28. Moreover, even if it is assumed that a false promise of marriage was made to the complainant initially by the appellant, even though no such cogent evidence has been brought on record before us to that effect, the fact that the relationship continued for nine long years, would render the plea of the complainant that her consent for all these years was under misconception of fact that the Appellant would marry her implausible. Consequently, the criminal liability attached to such false promise would be diluted after such a long passage of time and in light of the fact that no protest was registered by the complainant during all those years. Such a prolonged continuation of physical relationship without demurral or remonstrance by the female partner, in effect takes out the sting of criminal culpability and neutralises it.

29. It will be very difficult to assume that the complainant who is otherwise a mature person with two grown up children, was unable to discover the deceitful behaviour of the appellant who continued to have sexual



relationship with her for such a long period on the promise of marriage. Any such mendacious act of the appellant would have been exposed sooner without having to wait for nine years. The inference one can draw under the circumstances is that there was no such false promise made to the complainant by the appellant of marriage by continuing to have physical relationship so as to bring this act within the province of Section 376 IPC and therefore, there was no vitiation of consent under misconception of fact.

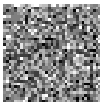
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31. In our view if criminality is to be attached to such prolonged physical relationship at a very belated stage, it can lead to serious consequences. It will open the scope for imputing criminality to such long term relationships after turning sour, as such an allegation can be made even at a belated stage to drag a person in the juggernaut of stringent criminal process. There is always a danger of attributing criminal intent to an otherwise disturbed civil relationship of which the Court must also be mindful.”

xxx-xxx-xxx-xxx

13. After hearing the learned counsels for the parties, this Court is of the view that considering the totality and circumstances of the present case, wherein the prosecutrix-complainant is stated to be of 49 years of age and the prosecutrix-complainant as well as the petitioner were also earlier married and have grown up children and as per the learned counsel for the petitioner, they had attended the marriage of each other children, this Court deems it fit and proper to grant anticipatory bail to the petitioner.

14. Consequently, the present petition is allowed. It is directed that in case in future the petitioner is required to join the investigation process, then he



shall join the investigation and cooperate fully with the investigation process. In the event of arrest, the petitioner shall be released on bail by the Arresting/Investigating Officer on his furnishing bail bonds/sureties to his satisfaction, subject to the conditions as provided under Section 482(2) of the BNSS, 2023 with an added condition that the grant of anticipatory bail to the petitioner shall be subject to deposit of his mobile phone which he has been using for the last 5 years, within a period of three days from today with the Investigating Officer of the case. The petitioner shall also deposit his passport with the Investigating Officer. In case the aforesaid two conditions are not satisfied by the petitioner i.e. deposit of his mobile phone and his passport with the Investigating Officer within a period of three days from today, then the anticipatory bail granted to the him shall automatically be vacated and the present petition shall stand dismissed.

15. However, anything observed hereinabove shall not be treated as an expression of opinion on the merits of the case and is meant for the purpose of deciding the present petition only.

20.01.2025
Chetan Thakur

(JASGURPREET SINGH PURI)
JUDGE

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