
(2019) 07 P&H CK 0172

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous Petition (M) No. 20002 Of 2019

Manish Poonia

APPELLANT

Vs

Union Territory Of Chandigarh And Another

RESPONDENT

Date of Decision : 18-07-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 156(3), 438
Indian Penal Code, 1860 — Section 323, 376, 376(2), 377
Protection Of Children from Sexual Offences Act, 2012 — Section 4

Citation : (2019) 07 P&H CK 0172

Hon'ble Judges : Raj Shekhar Attri, J

Bench : Single Bench

Advocate : J.S. Bedi, Sunil Sihag, Rajeev Sharma, S.S. Nain

Final Decision : Dismissed

Judgement

Raj Shekhar Attri, J

The petitioner has filed this petition under the provisions of Section 438 Cr.P.C. for grant of anticipatory bail in FIR No.32 dated 02.02.2019 registered under Section 376(2) IPC at Police Station North, Chandigarh.

The petitioner is working as a bank officer and is a married person and having a living spouse. The victim is also a bank employee and was unmarried.

The petitioner has sought the marriage proposal on a marriage website which is running in the name and style of "Shadi.com" wherein he has shown his status as single/unmarried.

Complainant/victim came in contact of the petitioner through said website, she believed his version as true and both liked each other. As such, close intimacy developed in between them. It is the case of the prosecutrix that in fact, after said intimacy, she fell in deep love with the petitioner, therefore, she accepted his versions. It is alleged that on 26.9.2017, petitioner forcibly made physical relations with the prosecutrix in his car in the parking lot of Sukhna Lake at

Chandigarh with the promise to marry her. Even thereafter, the physical relations continued.

According to the prosecutrix, the sister of the petitioner is a police officer and she invited the prosecutrix and her mother in her office on 14.01.2018. Thereafter, they were also invited at home to develop the relations. The victim has asserted that much later, petitioner disclosed that he is already married and that his divorce petition against his first wife is pending in a court and he assured the victim that his divorce matter will be settled very shortly as his first wife had demanded Rs.25 lacs as permanent alimony.

It is the case of the prosecutrix that petitioner developed physical relations with her on the pretext of marriage and later on, he backed out from it.

On the receipt of the application by the police, a preliminary inquiry was conducted by Sub Inspector Sarita Roy, who opined that the allegations levelled against the petitioner in said application are not true.

Then the prosecutrix moved a complaint along with an application under Section 156 (3) Cr.P.C. before the Magistrate with a request to register a criminal case against the petitioner. In the said application, the learned Chief Judicial Magistrate, Chandigarh passed order on 30.1.2019 vide which SHO, Police Station, Sector 17, Chandigarh was directed to register FIR under Section 376 IPC against the present petitioner and to conduct investigation.

I have heard the learned counsel for the parties and have gone through the record.

Learned counsel for the petitioner vehemently relied upon the conversation between the complainant and her mother, which took place in March, 2018, wherein the prosecutrix admitted that she has ample knowledge with regard to the marital status of the petitioner; that the question of rape does not arise at all as whatever happened between the parties, that was with the consent of each other. He further submitted that the mobile phone of the petitioner has already been delivered to the police whereas, the mother of the prosecutrix is not cooperating in the investigation.

On the other hand, learned counsel for the Union Territory, Chandigarh as well as counsel for the complainant have submitted that the petitioner had given matrimonial-advertisement in a website-"Shadi.com" wherein he has shown his status as "Never Married" and that said advertisement attracted the prosecutrix as she was unmarried at that time; that the consent of the prosecutrix has been obtained by misconception and by fraud; that thereafter, at the instance of the sister of the petitioner, who is a police officer, false FIR No.89 dated 26.3.2019 under Sections 323, 377, 506 IPC and Section 4 of the POCSO Act, 2012 at Police Station, Pinjore has been registered against the mother of the prosecutrix and similar FIR was registered against her and it added insult to the injury. According to the learned counsel for U.T. Chandigarh, in this case, custodial

interrogation of the petitioner is necessary and the petitioner is not entitled to the benefit of bail.

Learned counsel for the complainant also endorsed the arguments of the State counsel.

I have given my thoughtful consideration to the rival contentions.

The allegations against the petitioner are of serious nature. According to which, petitioner has publicly issued notice by above said website "Shadi.com" seeking marriage proposal by showing his status as "Never Married". When the prosecutrix contacted, he again allured her and promised to solemnize marriage with her and then developed physical relations with her. In fact, she believed the petitioner and her consent was taken at the initial stage that the petitioner is unmarried and he wanted to marry with her and he has expressed his love towards her. At the later stage, when she came to know that petitioner was already married and having a living spouse, she reprimanded him but petitioner again assured her that he had already filed a petition for divorce against his first wife and he will obtain divorce. On this assurance, he continued in the physical relations. But later on, he backed out from his promise. It is apparent that at the initial stage, the consent of the prosecutrix was taken on the pretext of marriage, thus, under misconception and by playing a fraud upon her.

It has been contended on behalf of the victim that the prosecutrix has suffered atrocities at the hands of the petitioner and his relatives. An FIR was registered against her as well as her mother. However, this Court will not comment upon the registration of two FIRs against the prosecutrix and her mother as the matter is sub judice.

Complainant has asserted that the alleged telephonic conversation between her and her mother is after June, 2018 i.e. much after the occurrence and it will not affect the case of the prosecution.

However, the telephonic conversation is a matter of fact and its actual date will be ascertained only after the parties adduce evidence. The investigation is in progress and it is for the investigating agency to collect the evidence/material as available. If the mother of the prosecutrix had failed to give her voice samples, it shall be looked into by the trial court.

To the mind of this Court, the custodial interrogation of the petitioner is necessary in this case, and as such, he is not entitled to the concession of anticipatory bail. Hence, present petition being devoid of merit stands dismissed.

However, nothing expressed above shall affect the merits of the case.