

# Law Today Live Doc. Id. 15563

**PUNJAB AND HARYANA HIGH COURT**

**Before: Harnaresh Singh Gill, J.**

CRM-M-23535-2020

Decided on: 28.10.2020

Bhushan

Petitioner

Versus

State of Haryana

Respondent

Present:

Ms. Rajni Paul, Advocate for the petitioner.

Mr. Ramesh Kumar Ambavta, AAG, Haryana.

**Indian Penal Code, 1860 (45 of 1860), Section 376(2)(n) -- Code of Criminal Procedure, 1973 (2 of 1974), Section 438 – Rape case – Anticipatory bail -- Petitioner and the complainant resided together for a period of 8 months with the knowledge of their parents – Further submission that both had decided to marry, yet on account of some temperamental differences, the marriage could not be solemnized, consensual relationship and the same cannot be said to attract the offence u/s 376(2)(n) of IPC and backtracking from the promise of marriage would at the most be an act of promiscuity. Pramod Suryabhan Pawar’s case (2019) 9 SCC 608 relied – Interim protection given directing the petitioner to join the investigation -- Petitioner joined the investigation and is now not required for any further investigation -- Petition allowed and the order granting interim bail to the petitioner made absolute.**

(Para 3-6)

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**HARNARESH SINGH GILL, J. (ORAL) –**

1. Case is taken up for hearing through video conferencing.
2. Through this petition, the petitioner seek anticipatory bail in case bearing FIR No.209 dated 06.07.2020 registered under Section 376 (2) (n) IPC, at Police Station Sector-50 Gurugram, District Gurugram.
3. On 20.08.2020, this Court passed the following order:-

*“Through this petition, the petitioner seeks anticipatory bail in case FIR No.209 dated 06.07.2020 registered under Section 376 (2) (n) IPC, at Police Station Sector-50 Gurugram, District Gurugram.*

Learned counsel for the petitioner submits that as per the FIR itself, the petitioner and the complainant resided together for a period of 8 months; that this fact was in the knowledge of their parents and that the father of the petitioner took him away on 22.06.2020. It is further submitted that there is no proof of pregnancy in the present case.

It is further submitted that though the petitioner and prosecutrix, had decided to marry, yet on account of some temperamental differences, the marriage could not be solemnized. It is, thus, contended that present is a case of a consensual relationship between the two adults and the same

cannot be said to attract the offence under Section 376(2)(n) of IPC. It is further submitted that backtracking from the promise of marriage would at the most be an act of promiscuity. In support of his assertions, she relies upon the judgment of the Hon'ble Supreme Court in 'Pramod Suryabhan Pawar Vs. State of Maharashtra and another' (2019) 9 SCC 608.

Notice of motion.

On the asking of this Court, Mr. Ramesh Kumar Ambavta, AAG Haryana, accepts notice on behalf of the respondent-State and states that as per his instructions, there is no record of pregnancy. At this stage, Mr. Chritarth Palli, Advocate, appears and filed copy of vakalatnama on behalf of the complainant, through email, which is taken on record.

Learned counsel for the complainant specifically submits that the very day when the petitioner came to know about him having impregnated the complainant, he parted with the company of the complainant. He further submits that though there is no medical record to this effect, yet the whatsapp chat shows that the sister of the petitioner had offered money to the complainant for abortion.

Adjourned to 28.10.2020.

Meanwhile, the petitioner is directed to join the investigation and if he is sought to be arrested, he shall be released on interim bail to the satisfaction of Investigating Officer/Arresting Officer subject to the conditions as envisaged in Section 438 (2) of the Code of Criminal Procedure.

4. Learned counsel for the petitioner submits that pursuant to the order dated 20.08.2020 passed by this Court, the petitioner has joined the investigation.

5. Learned State counsel, on instructions from ASI Manju Bala, submits that the petitioner has joined the investigation on 26.09.2020 and is now not required for any further investigation.

6. In view of the above, without commenting on the merits of the case, the present petition is allowed and the order dated 20.08.2020 granting interim bail to the petitioner, is made absolute, subject to the conditions laid down in Section 438 (2) of the Code of Criminal Procedure.

**Petition allowed.**

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