

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-23769-2015

Date of decision:- July 28, 2015

Ashish Mandal

...Petitioner..

VS

State of Haryana

...Respondent..

CORAM:- HON'BLE MR. JUSTICE JASPAL SINGH

Present:- Mr. Amit Choudhary, Advocate,
for the petitioner.

Mr. D.R. Singla, DAG, Haryana.

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Jaspal Singh, J.

Present petition has been preferred under Section 439 of the Code of Criminal Procedure (for short, 'Code') by Ashish Mandal, now confined in District Jail, Faridabad for grant of regular bail, in case FIR No.201, dated 31.03.2015, under Sections 363, 366-A, 344, 376 IPC and Section 4 of POSCO Act, Police Station Saran, District Faridabad.

2. Briefly stated, allegations against present petitioner levelled by prosecutrix are that she has relation with petitioner for the last more than two and half years. On March 20, 2015, she left her house with petitioner and stayed with him in Dabua colony till March 23, 2015. Both of them were intercepted by police while sitting in the park on

March 23, 2015. It was further unfolded by her that petitioner used to commit rape upon her for the last about two and half years on the allurement of marriage. The matter was investigated. Finding a prima facie against petitioner, report under Section 173 (2) of the Code was presented in the Court of Jurisdictional Magistrate, which is now pending trial.

3. It has been ebulliently argued by learned counsel for petitioner that instant case has been registered by prosecutrix in collusion with her family members just to harass and humiliate petitioner and to extract money from him. In fact, he has nothing to do with prosecutrix. There is an inordinate delay of 8 days in lodging the FIR, which is absolutely unexplained. Moreover, as per statement of prosecutrix recorded under Section 164 of the Code, she left the house at her own accord. Prosecutrix got herself medico- legally examined after counseling by NGO, otherwise, she was reluctant for the reason known to her. Even otherwise, medical report is suggestive of the fact that age of prosecutrix was approximately 25 years, as age of Menarche opined to be 12 years back. The age of puberty is approximately 13 years, as per medical science. So, if the age of prosecutrix is considered to be 25 years, she being major can be said to be a consenting party as per the averments of FIR. Petitioner is in custody since March 31, 2015. Investigation is complete and report under Section 173 (2) of the Code has already been presented. Thus, custody of petitioner is not at all required by the investigating agency. Learned counsel accordingly prayed that petitioner may be released on bail.

4. On the other hand, learned State counsel has vehemently opposed the petition submitting that there are serious and specific allegations against petitioner and as per contents of FIR, he kidnapped the prosecutrix/victim and continuously subjected her to sexual intercourse for the last more than two and half years on the pretext of marriage. Thus, he does not deserve the concession of bail.

5. This Court has given an anxious thought to the rival submissions made by learned counsel for the parties and has perused the record.

6. There are specific allegations levelled by prosecutrix that she was continuously subjected to rape by petitioner for the last about two and half years on the pretext of marriage. For the simple reason that there is delay of 8 days in lodging the FIR, prosecutrix cannot be disbelieved, at this stage. Generally, in such like matters, prosecutrix as well as her parents are reluctant to report the matter to police as the same is likely to harm their status/reputation and it is only when they reconcile, report the matter to the police. In this case also, initially prosecutrix was reluctant to get herself medico-legally examined but after counseling, she came forward to get herself medico legally examined. As far as age of prosecutrix or that she can be said to be consenting, is concerned, at this stage, no opinion can be expressed.

7. No doubt, challan has already been presented and petitioner is facing trial but it does not mean that these facts entitle him to bail.

8. Taking into consideration the seriousness of offence and other factors discussed above, this Court does not find it a fit case to

grant the concession of bail. Accordingly, petition under consideration is dismissed.

9. However, it is made clear that any observation made in this case shall have no bearing on the merits of the main case as the same has been made for the disposal of instant petition.

(JASPAL SINGH)
JUDGE

July 28, 2015
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