

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-42311-2015

Date of Decision: December 18, 2015

Himank Parikh

.....Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE NARESH KUMAR SANGHI

Present: Mr. Navkiran Singh, Advocate, and
Mr. Nav Rattan Singh, Advocate,
for the petitioner.

Mr. Sanjay Kumar Saini, AAG, Haryana.

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- 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?***

NARESH KUMAR SANGHI, J.(Oral)

Prayer in this petition filed under Section 439, Cr.P.C.,

is for grant of bail to petitioner, who has been booked for having committed the offences punishable under Sections 328, 376, 406, 467, 468, 471 and 506, IPC, in a case arising out of FIR No. 182, dated 15.06.2015, registered at Police Station, Sectors-55/56, Gurgaon.

Learned counsel for the petitioner contends that even if the whole case of the prosecution is taken at its face value, then also the gravamen of the offences for which the petitioner has been booked are not attracted qua him; the petitioner and the prosecutrix (name concealed), aged about 31 years, met on Facebook on 27.05.2014. It was revealed to the petitioner that the prosecutrix was a married woman having 10-year-old daughter and was not maintaining good relations with her husband; the petitioner, who is also aged about 31 years was a married male and having 3-year-old son, he too was not maintaining good relations with his wife; the prosecutrix herself went to Jaipur from Gurgaon and checked into a hotel under her own handwriting; the letters written by the prosecutrix which have been annexed with the present petition would clearly spell out that she had developed relationship with the petitioner with her free will and consent; the short messages conversation, the hard copy of which

have been attached with the present petition, would further fortify the stand of the petitioner that the prosecutrix had fallen in love with the petitioner with her free will and consent. It has also been brought to the notice while referring to the cross-examination of the prosecutrix, when she appeared as PW-1 before learned trial Court that the photocopy of the letters appended with this petition were under her handwriting; she also admitted the conversation by way of short messages with the petitioner; and that a case of consent has been given the colour of a rape case under the greed. He has further pointed out that it was not possible to have deceitful sex with a woman, aged 31 years and working as a teacher, particularly when she was married and having a daughter of about 10 years.

Learned counsel for the State opposed the grant of bail to the petitioner on the premise that in the month of June, 2015, the petitioner had extended threats to the prosecutrix and had deceitfully committed rape upon her. He further submits that even the parents of the prosecutrix were extended threat by the petitioner.

I have heard learned counsel for the parties and with

their able assistance have gone through the material available on record.

On a specific query by this Court to the learned counsel for the State, he fairly conceded that the sexual relationship between the petitioner and the prosecutrix were held in the year 2014, while the threats were extended in the month of June, 2015, which clearly show that at the time of their intimate relationship, the petitioner had not extended any threat to the prosecutrix. This Court finds that the prosecutrix is a married woman of 31 years and has a 10-year-old female child; it is improbable that such a mature and educated woman can be sexually exploited by the petitioner; much discussion while dealing with the bail petition might prejudice the interest of either party. At this stage, this Court can only observe that sexual act on the part of petitioner with the prosecutrix can be termed as 'rape' would be moot point during trial. The petitioner is behind the bars from 15.06.2015, and he is neither required nor involved in any other case. It is also apposite to mention here that statements of the prosecution has already been recorded by learned trial Court, therefore, there is no apprehension of winning over the witness.

In view of the above discussion, the present petition is accepted. Petitioner-Himank Parikh, son of Dinesh Kumar, resident of B-55, Kishore Nagar, Murli Pura, Ward No. 6, Jaipur, Rajasthan, (now detained in District Jail, Gurgaon), is directed to be released on bail, during the pendency of the trial of the present case, subject to his furnishing bail bonds to the satisfaction of learned Chief Judicial Magistrate/Duty Magistrate, Gurgaon.

Whatever has been observed above is for the limited purpose of deciding the present petition.

December 18, 2015
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(NARESH KUMAR SANGHI)
JUDGE