

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

CRM-M No.1810 of 2019

Date of decision: 1st March, 2019

Mohammad Asif

... Petitioner

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Saqib Ali Khan, Advocate for the petitioner.

Mr. A.S. Sandhu, Addl. Advocate General, Punjab
for the respondent/State.

Mr. Sunny Singla, Advocate for the complainant.

FATEH DEEP SINGH, J. (ORAL)

Allegations against the petitioner Mohammad Asif in this first regular bail application under Section 439 Cr.P.C. in case bearing FIR No.78 dated 14.07.2018 under Section 376(2)(n) IPC pertaining to Police Station City II, Malerkotla, District Sangrur, have been levelled by the complainant victim aged around 22 years (later during investigations revealed to be 26 years) alleging that during the course of events she came in contact with the petitioner and remained in relationship for almost 1 ½ years during which the petitioner is alleged to have defiled her on the pretext of undergoing marriage and when he refused the present case was got registered leading to arrest of the petitioner in July 2018.

Learned counsel for the petitioner Mr. Saqib Ali Khan contends that the complainant is a mature lady, grown up aged around 26 years and it was a consensual relationship and there is no element of sexual assault upon the complainant nor the medical evidence supports the case of sexual assault at any given point of time.

On behalf of the State, Mr. A.S. Sandhu, Addl. Advocate General, Punjab on instructions from ASI Nirmal Singh, Police Station City II, Malerkotla assisted by Mr. Sunny Singla, Advocate representing the complainant has sought to oppose the grant of bail on the grounds of heinousness of the offence and seriousness of allegations contending that the petitioner had deceived the complainant on the pretext of marriage and had taken undue advantage of the girl and therefore, if allowed bail he would certainly stifle the trial.

Going through the submissions of the two sides, admittedly the complainant victim is a grown up girl and admits to be in this relationship for a period of more than one-and-a-half years and there is as per her own allegations, repeated number of physical relations between them. Thus, a debatable issue arises over the applicability of Section 376(2) IPC that can only be adjudicated at the trial which is not likely to conclude in the near future. Therefore, this Court is of the opinion that no useful purpose will be served by keeping the petitioner in custody in the present case. Accordingly, he is ordered to be released on regular bail to the satisfaction of Chief Judicial Magistrate/Duty Magistrate, Sangrur.

However, it is made clear that anything observed herein shall not be construed as an expression on the merits of the case.

The petition stands disposed off accordingly.

(FATEH DEEP SINGH)
JUDGE

March 1, 2019

rps

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