

CRM-M-3323 of 2019 (O&M)

[1]

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

CRM-M-3323 of 2019 (O&M)

Date of Decision: 25-02-2019

Vinod

.....Petitioner

v.

U.T. Chandigarh

.....Respondent

CORAM: HON'BLE MR.JUSTICE RAJ SHEKHAR ATTRI

Present: Mr.Vikas Bahl, Sr. Advocate with
Mr.Manbir Singh Batth, Advocate and
Ms.Aarzoo B. Garewal, Advocate
for the petitioner.

Mr.Amit Kumar Goyal, APP for U.T. Chandigarh.

RAJ SHEKHAR ATTRI, J. (ORAL)

CRM 2678 of 2019

The application is allowed as prayed. Documents Annexures
P1, P2 and P3 are taken on record.

CRM-M 3323 of 2019

The present petition has been filed under Section 439 Code of
Criminal Procedure for grant of regular bail to the petitioner in case FIR
No.175 dated 7.6.2018 registered for the offences punishable under Sections
376(2) of Indian Penal Code (for short, 'IPC') at Police Station Sector 19,
Chandigarh.

Heard.

Learned counsel for the petitioner submits that the petitioner

and the prosecutrix were working in Panchayat Bhawan, Sector 18, Chandigarh which is a semi government organisation. Both fell in love. It has been alleged that on the pretext of marry the prosecutrix, the petitioner committed rape with her. The Special Court reproduced same part of the FIR in the order dated 2.11.2018 itself which is as under:-

“.....she stated that she is working in Panchayat Bhawan, Sector 18, Chandigarh on contract basis as a housekeeper for the last 5 years and one boy namely Vinod is also working in Panchayat Bhawan as a clerk. In the year 2017, Vinod told her that he lover her and wants to marry her. She too started loving him.....”

The statement of the prosecutrix has already been recorded by the trial Court. Learned counsel for the petitioner placed reliance upon a judgment of the Hon'ble Supreme Court in **Dr.Dhruvaram Murlidhar Sonar v. State of Maharashtra & Ors.**, passed in Criminal Appeal No.1443 of 2018, decided on 22.11.2018, wherein in para 21 it has been held as under:-

“21. In the instant case, it is an admitted position that the appellant was serving as a Medical Officer in the Primary Health Centre and the complainant was working as an Assistant Nurse in the same health centre and that the is a widow. It was alleged by her that the appellant informed her that he is a married man and that he has differences with his wife. Admittedly, they belong to different communities. It is also alleged that the accused/appellant needed a month's time to get their marriage registered. The complainant further states that she had fallen in love with the appellant and that she needed a companion as she was a widow. She has specifically stated that "as I was also a widow and I was also in need of a companion, I agreed to his proposal and since then we were having love affair and accordingly we started residing together. We used to

reside sometimes at my home whereas some time at his home." Thus, they were living together, sometimes at her house and sometimes at the residence of the appellant. They were in a relationship with each other for quite some time and enjoyed each other's company. It is also clear that they had been living as such for quite some time together. When she came to know that the appellant 18 had married some other woman, she lodged the complaint. It is not her case that the complainant has forcibly raped her. She had taken a conscious decision after active application of mind to the things that had happened. It is not a case of a passive submission in the face of any psychological pressure exerted and there was a tacit consent and the tacit consent given by her was not the result of a misconception created in her mind. We are of the view that, even if the allegations made in the complaint are taken at their face value and accepted in their entirety, they do not make out a case against the appellant. We are also of the view that since complainant has failed to prima facie show the commission of rape, the complaint registered under Section 376(2)(b) cannot be sustained."

Without expressing any opinion on merits of the case and keeping in view the fact that conclusion of trial will take considerably long time, the present petition is allowed. Petitioner Vinod is ordered to be released on regular bail on furnishing bail bond and surety bond to the satisfaction of trial Court/Chief Judicial Magistrate/Duty Magistrate concerned subject to following terms:-

- (a) The petitioner shall comply with the conditions mentioned in Section 437 (3) Cr.P.C.
- (b) In the event of his absence on any date of hearing, the benefit of bail allowed to the petitioner shall stand withdrawn. The trial Court shall be competent to cancel

his bail bond and surety bond and proceed to procure his presence in accordance with law. In that eventuality, the petitioner shall have to apply for bail afresh.

- (c) He shall not leave the country without the previous permission of the Court.

(RAJ SHEKHAR ATTRI)
JUDGE

February 25, 2019

RC

<i>Whether speaking/reasoned?</i>	<i>Yes/No</i>
<i>Whether reportable?</i>	<i>Yes/No</i>