

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-17282-2019 (O&M)
Date of Decision : 11.06.2019

Rakesh

..... Petitioner

Versus

State of Haryana

..... Respondent

CORAM : HON'BLE MR. JUSTICE RAJ SHEKHAR ATTRI

Present : Mr. Aditya Sanghi, Advocate
for the petitioner.

Mr. Ashish Sanghi, DAG, Haryana.

RAJ SHEKHAR ATTRI, J. (Oral)

The present petition has been filed under Section 439 Code of Criminal Procedure for grant of regular bail to petitioner Rakesh in case FIR No.0004 dated 17.01.2019, registered under Sections 376 (2) (n) and 506 IPC at Police Station Women, District Fatehabad.

The allegations against the petitioner are that on 10.01.2019, he forcibly committed rape upon the prosecutrix without her consent. Even thereafter, he continued physical relations with her under the assurance of marriage.

The story, as narrated by the trial court in para No.2 of the order dated 04.04.2019 reads as under:-

“The learned counsel for the applicant/accused submitted that a false case has been registered against the applicant. According to the prosecutrix, she had been coming to Panchayat Bhawan, Fatehabad for training of stitching. In the mean time, she met the applicant who was working in SBI,

Fatehabad. He expressed his desire to marry her and they started talking with each other. In the year 2015, he developed physical relations with her in a hotel at Fatehabad and did not tell her that he was already married. She was residing in a rented room at Hisar. On 10.01.2019, at 7:00 pm, he came to her room and committed rape upon her. He further submitted that according to version of complainant, she had come to know that he was married but she continued to have physical relations with him and the last occurrence is stated to be of 10.01.2019. In case, the relations were under the promise of marry also, it cannot be termed as forcible and does not fall in the definition of rape. Prosecutrix was 24 years old and was of sufficient understanding to know the consequences of the act. He further submitted that statement of prosecutrix under Section 164 Cr.P.C. is also contradictory. She has also given an affidavit that the case was lodged under the pressure of her relatives. He further submitted that the applicant is in custody since the date of his arrest i.e. 25.01.2019 and conclusion of the trial will take time. The applicant undertakes to abide by the terms and conditions imposed by the court. Hence, prayed that the applicant be released on bail. In support of his arguments, he relied upon case law titled as Gitesh vs. State of Haryana 2019 (1) Law Herald 41.”

Learned counsel for the petitioner has submitted that the prosecution story is not reliable; that there is delay in lodging the FIR and that even if the prosecution story is taken to be true then the physical relation developed between both the petitioner and the prosecutrix with the consent of the prosecutrix and report of DNA fully negatives the story of the prosecution.

This court has considered these arguments and has gone through the record.

During the investigation, the vaginal swabs alongwith the underwear of the complainant was sent to the forensic science laboratory, who has reported that since no male DNA profile is indicated in the underwear. Hence it could not be compared.

The petitioner is stated to be in custody since 24.01.2019. The trial of the case will take long time. No useful purpose will be served by keeping the petitioner in custody any further.

Without commenting on the 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 Rakesh is ordered to be released on regular bail on furnishing bail bond and surety bond to the satisfaction of concerned trial Court/Chief Judicial Magistrate/Duty Magistrate, 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 prior permission of the Court.*

11.06.2019
mamta

(RAJ SHEKHAR ATTRI)
JUDGE

Whether speaking/reasoned
Whether Reportable :

Yes/No
Yes/No