

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

CRM-M-24946-2019 (O&M)
Date of Decision: September 03, 2019

Bikram Walia

... Petitioner

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

Present: Mr. Vivek K. Thakur, Advocate,
for the petitioner.

Mr. Saurav Khurana, DAG, Punjab.

Mr. Himanshu Puri, Advocate,
for the complainant.

Hari Pal Verma, J. (Oral)

Prayer in this petition filed under Section 439 Cr.P.C. is for grant of regular bail to the petitioner in case FIR No. 13, dated 29.01.2019, under Section 307 IPC, registered at Police Station City Kapurthala, District Kapurthala.

The aforesaid FIR has been registered at the behest of the prosecutrix, who is about 31 years of age and her marriage had solemnized on 23.05.2010 with Anil Kapoor son of Gulshan Lal Kapoor. She gave birth to a son in the year 2011. As per the FIR, the prosecutrix was a teacher at Prem Jot Public Senior Secondary School, Ajit Nagar, Kapurthala and she had a love affairs with the petitioner, to whom she started making calls on telephone. In response thereto, the petitioner had also started calling her.

The petitioner had offered to marry with her and the prosecutrix accordingly gave her consent. On 24.01.2019, when the prosecutrix had gone to school, the petitioner called her on telephone and asked her to come at Shani Mandir, near Shalamar Bagh. The prosecutrix had gone there on her Scooty where the petitioner met her. He took her on her Scooty to Village Mushakvaid at the house of his uncle Naili and introduced the victim that she is his sister-in-law. He took her in a room and committed rape upon her. Thereafter, after mortgaging her Scooty with his uncle Naili, the petitioner took the prosecutrix to Delhi by bus, with an intention to marry her. The petitioner told her that he will marry at Jodhpur and accordingly, he took the prosecutrix to Akash Hotel, Delhi, where he had sexual intercourse with her without her consent. When the prosecutrix protested for the same, the petitioner scratched at her neck with the finger nails of his hands and also pressed her neck and started saying that if she told this fact to anybody, then he will kill her. On the next day, she was taken to Jodhpur by train. There again, he had sexual intercourse with her without her consent. On 27.01.2019, after boarding the train, they reached Kapurthala where the whole incident was narrated by the prosecutrix to her in-laws family. The precise allegation is that the petitioner committed rape upon the prosecutrix.

Learned counsel for the petitioner has argued that apart from the fact that the petitioner is in custody since 27.03.2019, the prosecutrix is a mature lady of 31/32 years of age, whereas the petitioner is about 21 years of age. She was already married, having a son and therefore, even if there were sexual relations with her, same were consensual, as throughout her

journey from Kapurthala to Delhi and Delhi to Jodhpur and again back to Kapurthala, she has not complained throughout. Otherwise, the trial Court has to ultimately settle the controversy. At the most the relations between the parties were consensual.

At this stage, learned counsel for the complainant has argued that the petitioner has sexually exploited the prosecutrix. He assured her to solemnize marriage with her and under the pretext of marriage, he established physical relations with her. The prosecutrix was threatened by the petitioner that he will make the relation public.

Learned State counsel, on instructions from ASI Sukhdev Singh, has stated that challan in this case has already been presented. The prosecution witnesses including the complainant are yet to be examined and the case is now fixed for 06.09.2019 for prosecution evidence before the trial Court. In the event of grant of bail to the petitioner, he will influence the witnesses including the prosecutrix.

Heard learned counsel for the parties.

The prosecutrix is a matured lady of 32 years of age, whereas the petitioner is a young boy of 21 years of age. She was already married, having a son and even if it is accepted that the petitioner assured or promised her to solemnise marriage, even then on the relevant date when she was taken to Delhi or Jodhpur, she was already married and could not have solemnised marriage with petitioner. In this manner, she could not conduct the second marriage with the petitioner without dissolution of her earlier marriage.

Be that as it may, the petitioner is in custody since 27.03.2019

and trial is not likely to be concluded in near future, the petitioner is admitted on regular bail, subject to furnishing of his bail bonds/surety bonds to the satisfaction of trial Court.

However, it is made clear that the observations made hereinabove shall not be construed as an expression on the merits of the case and the trial Court shall proceed with the trial independently without being influenced by the order of bail passed by this Court.

Present petition stands disposed of accordingly.

September 03, 2019
vkd

(Hari Pal Verma)
Judge

Whether speaking / reasoned : Yes / No

Whether reportable : Yes / No