

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

CRM-M-48224 of 2019.

Decided on:- November 19, 2019.

Ankur Rustogi @ Rastaugi.

.....Petitioner.

Versus

State of Haryana.

.....Respondent.

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA.

Present:- Mr. A.P.S. Deol, Senior Advocate with
Mr. Himmat Singh Deol, Advocate
for the petitioner.

Ms. Priyanka Sadar, A.A.G., Haryana.

HARI PAL VERMA, J. (Oral)

This is the second petition under Section 439 Cr.P.C. filed by the petitioner for grant of regular bail in FIR No.01 dated 02.01.2019 under Sections 376, 328 and 417 IPC, registered at Women Police Station, Rewari, District Rewari.

Learned senior counsel for the petitioner states that the earlier petition filed by the petitioner i.e. **CRM-M-9426 of 2016** was dismissed by this Court vide order dated May 23, 2019 as at that time, the prosecutrix was not examined in the case. Thus, the present petition has been filed by the petitioner after examination of the prosecutrix before the trial Court. He has referred the statement of the prosecutrix recorded before the trial Court as PW1 to contend that the prosecutrix is not consistent even as regard her marital status. In the opening lines of her cross-examination, she has stated that she had obtained a decree of divorce from her husband Dheeraj Sharma in November, 2014. However, when confronted with further details, she has

stated that she cannot tell the court, the place, date and year in which the said divorce petition was filed by her. No decree of divorce was placed on record by her in her evidence.

Learned senior counsel further states that at the most the relations between the petitioner and the prosecutrix were consensual in nature and there is no medical evidence to support the case of the prosecution that the rape was committed upon her. They were in regular touch from the year 2014 and there was regular conversation between them. There is substantial difference in the age of the petitioner and the prosecutrix. Moreover, the petitioner is in custody since 02.01.2019 and as against total 13 witnesses cited by the prosecution, only 3 witnesses have been examined in the case which include the prosecutrix and PW2 Sheela Devi. He has produced on record the copy of statement of PW2 Sheela Devi, to contend that PW2 has not supported the case of the prosecution and, rather, she has stated that she has never rented the house to anybody and, therefore, the allegation made by the prosecution that the prosecutrix was tenant in the house of Sheela Devi is incorrect. The copy of statement of PW2 Sheela Devi is taken on record.

Learned State counsel does not dispute the custody of the petitioner. However, she submits that there are serious allegations against the petitioner, who has exploited the prosecutrix as she was having some matrimonial dispute with her husband.

I have heard learned counsel for the parties.

The petitioner is in custody since 02.01.2019. PW2 Sheela Devi has not supported the case of the prosecution as she has not admitted the tenancy of the prosecutrix though there is a specific allegation in the FIR that

the prosecutrix remained as tenant with Sheela Devi for the year 2014 to 2018. Further more, the prosecutrix as PW1 has not been very clear in mind as regard the decree of divorce, as in her statement she has not come out with any such detail regarding the place, date and year in which the said divorce petition was filed by her and the decree of divorce granted in the case.

Therefore, considering the fact that the trial is not likely to be concluded in near future, as only 3 witnesses have been examined so far, whereas the prosecution has cited total 13 witnesses, this Court finds that the petitioner deserves to be admitted on bail.

Accordingly, the present petition is allowed and the petitioner is ordered to be released on bail on his furnishing adequate bail and surety bonds to the satisfaction of learned trial Court.

However, it is made clear that in case the petitioner influences the remaining prosecution witnesses in any manner directly or indirectly, the prosecution shall be at liberty to seek cancellation of his bail.

The observations made hereinabove shall not be construed as an expression of opinion on the merits of the case and the trial Court shall decide the case without being influenced with these observations in any manner.

November 19, 2019
Yag Dutt

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned:	Yes
Whether Reportable:	No