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YOGESH SHARMA
2020.10.26 14:27
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**IN THE HIGH COURT OF PUNJAB AND HARYANAAT
CHANDIGARH**

CRM-M-9090-2020(O&M)

Date of decision : 14.10.2020

Vivek Tyagi

.....Petitioner

versus

State of Haryana and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE ALKA SARIN

Present: Mr. Keshav Pratap Singh & Mr. Sushil Bhardwaj, Advocates
for the petitioner.

Ms. Dimple Jain, AAG, Haryana.

Mr. Ramnish Puri, Advocate for respondent no.2.

ALKA SARIN, J. (ORAL)

Heard through video conferencing.

This petition under Section 439 of the Code of Criminal Procedure, 1973 has been filed for grant of regular bail to the petitioner in FIR No.43 dated 16.08.2019 under Sections 376, 506 and 34 of the Indian Penal Code, 1860 registered at Police Station Sector 32-33, Karnal, District Karnal (Haryana).

Learned counsel for the petitioner would contend that there is a variance in the version set out by the complainant/prosecutrix (respondent no.2) as stated in the FIR and in her statement recorded under Section 164 Cr.P.C. Learned counsel for the petitioner would further contend that the present case is of consensual relationship and not

of rape as has been alleged.

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Learned counsel for the complainant/prosecutrix (respondent no.2) has referred to the order dated 05.12.2019 passed by this Court dismissing the anticipatory bail petition bearing CRM-M No.40354 of 2019 filed by the petitioner. He has further contended that in the detailed order dated 05.12.2019, the law laid down by the Hon'ble Supreme Court regarding distinction between rape and consensual sex has been discussed in detail. He has further contended that the petitioner in the present case had threatened the complainant/prosecutrix (respondent no.2) and an audio recording of the same is with the complainant/prosecutrix (respondent no.2).

Learned counsel for the State has pointed out that the statement of the complainant/prosecutrix (respondent no.2) is yet to be recorded and in view thereof, it is not a fit case for grant of regular bail to the petitioner.

I have heard learned counsel for the parties.

The allegations against the petitioner in the FIR are that the petitioner had developed physical relations with the complainant/prosecutrix (respondent no.2) on the pretext of marrying her. From a perusal of the order passed by this Court on 05.12.2019 in CRM-M No.40354 of 2019, it emerges that the petitioner herein had filed a civil suit wherein he had admitted that there were talks of marriage between him and the complainant/prosecutrix (respondent no.2), that he and the complainant/prosecutrix (respondent no.2) were class-mates and intimacy had developed between them and further that the petitioner had shown his inability to get married as they belonged to different castes. This Court further found that there were clear allegations against the

petitioner that he established physical relations with the complainant/prosecutrix (respondent no.2) on the pretext of performing marriage with her. The Apex Court in the case of '**Dr. Dhruvaram Murlidhar Sonar vs. State of Maharashtra & Ors.**' [2018 SCC Online 3100] has drawn a clear distinction between rape and consensual sex. In the present case there are allegations of force having been used and rape committed upon the complainant/prosecutrix (respondent no.2).

In view of the above, keeping in mind the allegations made that the relationship was established on the false pretext of marriage, the allegations of force being used against the complainant/prosecutrix (respondent no.2) to commit rape upon her and the fact that the statement of the complainant/prosecutrix (respondent no.2) is yet to be recorded, I do not find this to be a fit case for grant of regular bail. The petition is dismissed.

It is made clear that any observation made herein is not to be treated as an expression of opinion on the merits of the case.

Dismissed.

14.10.2020
Yogesh Sharma

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO