

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-23887-2020

Date of Decision : 17.09.2020

Tarun

...Petitioner

Versus

State of Haryana

....Respondent

Coram : Hon'ble Mr. Justice B.S. Walia

Present : Mr. Aman Pal, Advocate for the petitioner.

Mr. Surender Singh, Asstt. AG, Haryana.

B.S. Walia, J. (VC)

1. Case is being taken up for hearing through Video Conferencing due to the outbreak of Covid-19 pandemic.

2. Prayer in the petition under Section 439 Cr.P.C., is for grant of regular bail to the petitioner during pendency of trial in case FIR No.26 dated 16.05.2020, registered under Section 376 (2) (n) IPC, 1860, at Police Station, Women Police Station, Gurugram.

3. Brief facts of the case are that FIR was registered on the allegations that the complainant came in contact with the petitioner as both were singing *Bhajans* in *Mata Jagrans* due to which they got friendly and remained in relationship for two years, that in the year 2019, the petitioner took the complainant to a hotel in Gurugram and put *Sindoor* on her forehead and by misleading her on the pretext of marriage had been raping her and subsequently refused to solemnize marriage.

4. Learned counsel contends that the prosecutrix is 3 years elder to the petitioner and was working with the petitioner singing *Mata Bhajans* in

Gurugram, that the petitioner was 17 years of age at the time of commencement of relationship while the prosecutrix was 20 years of age, the relationship between the petitioner and the prosecutrix was on account of mutual liking, that the relationship continued over a period of two years and in the circumstances it was a clear case of consensual sex, besides the petitioner still has feelings for the prosecutrix and would like to marry her but is unable to do so at this point of time on account of being underage being underage i.e. only 19 years old and that it is only on account of circumstances beyond his control, that he is unable to marry the prosecutrix despite having every intention to do so. Reliance has been placed by learned Counsel on the decision of **Hon'ble the Supreme Court in Dr. Dhruvaram Murlidharan Sonar vs. State of Maharashtra and others, SLP (Criminal) No.6532 of 2018**. Relevant extract of the same is reproduced as under :-

xx xx xx

“20. Thus, there is a clear distinction between rape and consensual sex. The court, in such cases, must very carefully examine whether the complainant had actually wanted to marry the victim or had mala fide motives and had made a false promise to this effect only to satisfy his lust, as the later falls within the ambit of cheating or deception. There is also a distinction between mere breach of a promise and not fulfilling a false promise. If the accused has not made the promise with the sole intention to seduce the prosecutrix to indulge in sexual acts, such an act would not amount to rape. There may be a case where the prosecutrix agrees to have sexual intercourse on account of her love and

passion for the accused and not solely on account of the misconception created by accused, or where an accused, on account of circumstances which he could not have foreseen or which were beyond his control, was unable to marry her despite having every intention to do. Such cases must be treated differently. If the complainant had any mala fide intention and if he had clandestine motives, it is a clear case of rape..... ”

5. Learned counsel contends that the petitioner is in custody since 17.05.2020, investigation is complete, challan has been filed but the charges have not been framed and trial would take considerable period of time to conclude, therefore, no useful purpose would be served by keeping the petitioner a young man 19 years old behind bars especially in view of the circumstances prevailing on account of Corona Virus pandemic.

6. Learned Asstt. AG, Haryana, on the other hand, opposes the prayer for bail on the ground that the petitioner falsely represented to the prosecutrix that he would marry her and on said basis entered into physical relations with her but subsequently refused to marry her.

7. I have considered the submission of learned counsel for the parties.

8. Admittedly the petitioner was 17 years of age while the prosecutrix was 20 years of age at the time of their coming in contact with each other while working together performing *Mata Bhajans* at *Jagrans* in *Gurgaon* over a period of close to two years during which they developed a

liking for each as also physical relationship. Reading of the FIR reveals

allegation that the sexual relationship developed after the petitioner applied Sindur on the maang of the prosecutrix and assured her that he would marry her but the stand on behalf of the petitioner, is that even now the petitioner has a liking for the prosecutrix, that he has never refused to marry the prosecutrix and would like to marry her but is unable to marry her at present on account of being underage i.e. 19 years of age. In the aforementioned background and taking into account all aspects of the matter as also that charges have yet to be framed and trial is likely to take considerable period of time to conclude, no useful purpose would be served by keeping the petitioner in custody on account of circumstances prevailing due to Corona Virus pandemic.

9. Accordingly, the petition for regular bail is allowed and the petitioner is ordered to be released on bail subject to his furnishing bail / surety bonds to the satisfaction of the learned trial Court / CJM / Duty Magistrate, concerned, provided he is not required in any other case. The petitioner shall also comply with the conditions that :

- i) he shall not directly or indirectly make any inducement, threat, or promise to any person acquainted with the facts of the accusation against him so as to dissuade him from disclosing such facts to the court or to any police officer and
- ii) he shall not leave India without the prior permission of the Court.

10. However, nothing stated hereinabove would be construed as an expression of opinion on the merits of the case.

(B.S. Walia)
Judge

September 17, 2020

'PS-Rajesh'