

CRM-M-28176-2020

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(PROCEEDINGS THROUGH V.C.)

CRM-M-28176-2020

Date of Decision: September 21st, 2020

Vikas

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

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

Ms. Tanisha Peshawaria, DAG, Haryana.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Petitioner has approached this Court for grant of regular bail by filing this petition under Section 439 of the Code of Criminal Procedure, 1973, in FIR No.123, dated 04.10.2019, registered at Police Station Rohadai, District Rewari, under Sections 363, 366, 376-D and 120-B of the Indian Penal Code.

It is the contention of the learned counsel for the petitioner that the present is a case of love affair between the petitioner and the prosecutrix. He states that the prosecutrix, as a matter of fact, left her house on her own and went with the petitioner to Delhi where they got married. He has placed on record the marriage certificate and affidavits of the petitioner as well as of the prosecutrix. He asserts that they were actually staying together and it is when the petitioner and the prosecutrix were recovered by the police because of the registration of an FIR by the brother

of the prosecutrix. Thereafter, the things took a U turn and probably under pressure, the prosecutrix has made allegations against the petitioner and the co-accused. It is contended that the petitioner was arrested in this case on 16.10.2019 and is in custody since then. Although challan has been presented but till date, charge has not been framed. The application for bail of the petitioner stands dismissed by the Court below for the reason that two of the co-accused of the petitioner are yet to be arrested. The trial of the case is not proceeding because of the prevailing COVID-19 pandemic and to support this contention, he has placed reliance upon the various zimni orders passed by the trial Court. He, thus, contends that the continuation of the petitioner in custody would not serve any purpose and therefore, he be granted the benefit of regular bail.

On the other hand, learned counsel for the State submits with reference to the statement of prosecutrix recorded under Section 164 of the Code of Criminal Procedure, that there are specific allegations with regard to the gang rape having been committed on her. Had it been the same as is asserted by the counsel for the petitioner, the things would have been different. However, other factual aspects asserted by the learned counsel for the petitioner relating to the stage of trial are not disputed by her.

I have considered the submissions made by the learned counsel for the parties and with their assistance have gone through the records of the case.

Petitioner is in custody since 16.10.2019. Although the documents which have been placed on record may be the subject matter of

evidence to be gone into by the trial Court, however, the said documents may throw light with regard to the relationship between the petitioner and the prosecutrix. There are certain contradictions which have been found when seen in the context of the FIR, which has been registered on the statement recorded under Section 164 of the Code of Criminal Procedure. However, keeping in view the custody period of the petitioner i.e. almost one year, with the challan having been presented but the charge having not been framed till date, putting the petitioner in custody in such a manner merely because his co-accused are yet to be arrest, is not justified.

Keeping in view the above facts and the fact that the trial is not likely to proceed in near future because of the prevailing pandemic, this criminal miscellaneous petition is allowed. Petitioner is ordered to be released on bail subject to his furnishing bail and surety bonds to the satisfaction of the trial Court/Chief Judicial Magistrate/Duty Magistrate, Rewari.

Any observation made herein-above shall have no bearing on the merits of the case during the trial in any manner.

September 21st, 2020
Harish

(AUGUSTINE GEORGE MASIH)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No