

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-33377-2020 (O&M)
Date of Decision: 18.12.2020

Tilak Raj	vs.	...Petitioner
State of Haryana		...Respondent

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

Present: Mr. Bikramjit Aroura, Advocate for the petitioner.

Mr. Pawan Kumar Longia, DAG, Haryana.

Mr. Rakesh Gupta, Advocate for the complainant.

B.S. Walia, J. (VC)

1. Case is being taken up for hearing through Video Conferencing due to the outbreak of pandemic Covid-19.
2. Prayer in the second petition under Section 439 Cr.P.C. is for grant of regular bail to the petitioner during the pendency of trial in case FIR No.66 dated 23.04.2019, under Sections 363, 366 IPC, 1860 registered at Police Station Barara, District Ambala, to which Section 376 IPC and Sections 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short, 'the Act'), were added later on.
3. Learned counsel contends that the petitioner has been implicated in a false case and that the offence u/s 376 IPC was not made out and at best it was a case of consensual sex between the petitioner and the prosecutrix as evident from the facts of the case, Section 363 IPC was not attracted as the prosecutrix was more than 18 years and 3½ months of age as on the date of incident as her date of birth as has come on record before

made by the father of the prosecutrix leading to registration of FIR on the basis of which the provisions of Section 3 (2) (v) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, could be said to be attracted. Lastly, facts of the case reveal that neither it was a case of kidnapping nor abduction or that Section 366 IPC was attracted.

4. Learned counsel contends that as per the statement of the prosecutrix under Section 164 Cr.P.C. before the learned JMIC, Ambala on 25.04.2019, she had gone to the house of her maternal uncle (in village Ugala) and that the petitioner (her neighbour in village Kolapur) used to talk with her and on 22.04.2019, he called her to Bus Stand, Ugala and told her that he would marry her, thereupon, allured her and took her to a hotel where he committed a wrong with her and went away thereafter, after leaving her in the hotel whereafter he came back the next day and took her to his bhua's house at Sambhalka i.e. at a distance of about 100 km's from Kurukshetra. Thereafter, the petitioner's father brought her back and left her at her house in kolapur and the petitioner did not marry her.

5. Learned counsel further contends that the petitioner refused to get herself medically examined on 24.04.2019 as is evident from Annexure P/2 (page 15/16 of paperbook) and was examined only on 26.04.2019 and the same revealed that the hymen was ruptured, there was no fresh bleeding, no redness, no tenderness, pubic hair was shaved but the impression was that possibility of sexual assault could not be ruled out. Learned counsel has also referred to the statement of the prosecutrix before the trial Court as PW-6, to the effect that she made an improvement in her statement U/s 164 Cr.P.C.

Ugala on 21.04.2019 and thereafter took her on the pretext of marriage from Ugala to a hotel in Kurukshetra, where also he committed rape upon her thereafter he left her there and on the next date took her to village Sambhalka to the house of his paternal bhua, where he threatened her that if she disclosed anything to anyone he would kill her. Learned counsel also referred to the cross-examination of the prosecutrix in which she admitted that the petitioner was her neighbour (in village Kolapur, where she resides with her father) and that the petitioner was married and having two children, Prachi aged 8 years and Aditya aged 4 years, that she had been taken on a motorcycle to a hotel in Kurukshetra but she did not disclose anything to any of the persons present in the hotel or even when he left her in the room of the hotel or when they walked from the hotel at Kurukshetra to the Railway Station nor to any of the ladies / lady police officials, other persons present in the train compartment from Kurukshetra to Sambhalka out of threat of dire consequences by the petitioner. Learned counsel contends that a perusal of the aforementioned position reveals the falsity of the accusations against the petitioners, besides the petitioner has been in custody since 25.04.2019, he has two minor children, trial would take long to conclude due to the prevailing Corona Virus Pandemic, out of 21 witnesses, only six had been examined, therefore, no useful purpose would be served by keeping the petitioner in custody.

5. Per contra, sole argument of learned DAG, Haryana as well as learned counsel for the complainant is that the petitioner allured the prosecutrix and had sexual intercourse with her on the pretext of marrying her, but did not marry her, therefore, he was not entitled to bail.

6. I have considered the submissions of learned counsel for the parties.

7. On specific query, learned DAG, Haryana and learned counsel for the complainant, have not denied that the date of birth of the prosecutrix is 02.01.2001 nor have pointed out any averment in the complaint made by the father of the proxecutrix to the police leading to registration of FIR on the basis of which the provisions of Section 3 (2) (v) of the Act, can be said to be attracted. It is also not denied that the prosecutrix and the petitioner are neighbour's in village Kolapur or that the prosecutrix was not aware of the petitioner being married and having two children, that although she had gone to the house of her maternal uncle in village Ugala, yet she had come to Bus Stand, Ugala on the alleged asking of the petitioner along with substantial sums of money which she had got from Kolapur as well as Ugala from where she proceeded along with the petitioner to a hotel in Kurukshetra where the prosecutrix had sexual intercourse with the petitioner allegedly on the petitioner telling her that he would marry her. Without commenting upon the merits of the case as set up in the prosecution and by taking into account that the petitioner is in custody since 25.04.2019 and out of 21 witnesses, only 6 have been examined, the trial is likely to take time and in the circumstances, petitioner has two minor children, I am of the considered view that no useful purpose would be served by keeping the petitioner in custody. Accordingly, the petition for regular bail is allowed and the petitioner is ordered to be released on bail during the pendency of the trial, subject to his furnishing requisite bail / surety bonds to the satisfaction of the

In any other case. The petitioner shall also abide by the conditions contained in Section 437(3) Cr.P.C. However, nothing stated hereinabove would be construed as an expression of opinion on the merits of the case.

(B.S. Walia)
Judge

18.12.2020
'Rajesh-PS-amit'

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No