

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

Criminal Misc. No.M-37903 of 2020

Date of Decision: 19.11.2020

Suresh

...Petitioner (s)

Versus

State of Haryana

...Respondent(s)

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

Present:- Mr. Baljeet Beniwal, Advocate
for the petitioner.

Ms. Gaganpreet Kaur, AAG, Haryana.

HARI PAL VERMA, J. (Oral)

The matter has been taken up for hearing through video conferencing due to outbreak of COVID-19.

Prayer in this petition filed under Section 439 of the Code of Criminal Procedure, 1973 is for grant of regular bail to the petitioner in FIR No.84 dated 22.07.2020 under Sections 323, 376(2n), 506 IPC registered at Police Station Ballabhgarh, District Faridabad.

As per the prosecution, marriage of the prosecutrix was solemnised with Mahesh. However, Mahesh died in the year 2012, leaving behind two children. After the death of her husband (Mahesh), the prosecutrix started living with the elder brother of her husband i.e. Gyan Chand in order to bring up the children. The prosecutrix also started working with M/s Infinity Pvt. Ltd., Sector 58, Faridabad, where the

present petitioner was the contractor. Subsequently, intimacy developed between the petitioner and the prosecutrix. On the assurance of the petitioner that he will solemnize marriage with the prosecutrix, he established physical relations with her and thereby, she became pregnant from the petitioner. When this fact was disclosed to the petitioner, his behaviour changed towards the prosecutrix and her pregnancy was got terminated on 20.07.2020. The petitioner along with others even tried to strangle the prosecutrix and left her at her residence at Ballabhgarh.

Learned counsel for the petitioner has argued that the allegation that the petitioner established physical relationship with the prosecutrix on the pretext of solemnizing marriage with her, is incorrect, as the prosecutrix was already married with Gyan Chand (elder brother of her deceased husband Mahesh) and unless she gets divorce from Gyan Chand, she cannot solemnize marriage with the petitioner. Moreover, the petitioner himself was also married and this fact was very much known to the prosecutrix. There is no medical evidence to support the allegation that rape was committed upon the prosecutrix. At the most, the physical relationship between the parties was with the consent of each other. The petitioner is in custody since 31.08.2020.

Learned State counsel does not dispute the custody of the petitioner. However, she submits that the petitioner established physical relationship prosecutrix on the pretext of marriage and the fact that the petitioner was already married was not in the knowledge of the prosecutrix.

I have heard learned counsel for the parties.

Apart from the fact that the petitioner was already married, the fact that the prosecutrix was married and staying with Gyan Chand (the elder brother of her deceased husband Mahesh), goes contrary to her statement that the petitioner established physical relations with her on the pretext of solemnizing marriage with her. Unless the prosecutrix proves that she has taken divorce from Gyan Chand, it is difficult to accept that the petitioner established physical relations with her on the pretext of marriage.

Be that as it may, considering the fact that the petitioner is in custody since 31.08.2020 and the parties being mature enough to understand the implications of such like relationship and trial in the case will take sufficient long time, this Court deems it appropriate to release the petitioner on regular bail.

Accordingly, the present petition is allowed and the petitioner is admitted on regular bail, subject to furnishing of his bail bonds/surety bonds to the satisfaction of trial Court/Duty Magistrate.

However, it is made clear that the observations made hereinabove shall not construe as expression of any opinion on the merits of the case and the observations, if any, are limited for the decision of the present petition.

November 19, 2020
AK

(HARI PAL VERMA)
JUDGE

Whether speaking / reasoned?

Yes / No

Whether reportable?

Yes / No