

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

CRM-M-39639 of 2020.

Decided on:- December 04, 2020.

Harish Kumar.

.....Petitioner.

Versus

State of Punjab.

.....Respondent.

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

Present:- Mr. Vipin Mahajan, Advocate
for the petitioner.

Mr. Randhir Singh Thind, D.A.G., Punjab.

HARI PAL VERMA, J. (Oral)

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

Present is a second petition filed by the petitioner under Section 439 Cr.P.C. seeking regular bail in FIR No.7 dated 07.04.2018 under Sections 376-D and 292 read with Section 34 IPC and Section 67 of the Information Technology Act, 2000 registered at Police Station Dhar Kalan, District Pathankot.

The earlier petition i.e. ***CRM-M-21898 of 2019*** titled as ***Harish Kumar Versus State of Punjab*** filed by petitioner for the same relief was dismissed as withdrawn vide order dated 23.07.2019 passed by this Court.

Learned counsel for the petitioner has argued that the petitioner is in custody since 10.12.2018. The allegations levelled against the petitioner are false. The prosecutrix was subjected to medical examination, wherein it has not been established that she was subjected to rape and the last sexual assault was allegedly done in December, 2017.

He has further submitted that the petitioner and prosecutrix are married with different persons. Since they were family friends, they came close to each other. He refers to the photographs (Annexure P-2) to contend that there is a close proximity between the petitioner and the prosecutrix. Physical relations, if any, established between them were consensual.

He has further contended that after registration of the FIR, a Special Investigation Team (SIT) was constituted in the case. Vide enquiry report dated 12.03.2020 (Annexure P-5), the SIT had reported that the petitioner and co-accused Rohit Kumar were found innocent and it was further reported that a cancellation report be prepared and supplementary Challan under Section 173(8) Cr.PC be filed in the Court as the offence does not fulfil the conditions of Section 375 IPC.

He has further submitted that since the prosecutrix had issued a cheque of Rs.4 lakh in favour of the petitioner which was dishonoured by the bank on presentation, the present FIR was registered by the prosecutrix.

Learned State counsel does not dispute the custody of the petitioner, however, submits that there are specific allegations of commission of rape upon the petitioner. Moreover, the earlier petition filed by the petitioner for the same relief was dismissed as withdrawn and now, there is no

change of circumstances which may warrant concession of bail to the petitioner.

I have heard learned counsel for the parties.

The petitioner is in custody since 10.12.2018. The photographs (Annexure P-2) show that there is close proximity between the petitioner and the prosecutrix. The matter was enquired into by SIT and as per the enquiry report dated 12.03.2020 (Annexure P-5), the petitioner was found innocent. It was further reported by the SIT that a cancellation report be prepared in the case. In this manner, this Court finds that the culpability of the petitioner is yet to be established during the trial and no useful purpose would be served by detaining him in further custody.

Accordingly, the present petition is allowed and the petitioner is ordered to be released on bail on his furnishing adequate bail and surety bonds to the satisfaction of learned trial Court/Duty Magistrate.

The observations made hereinabove shall not be construed as an expression of opinion on the merits of the case and the trial Court shall decide the case without being influenced with these observations in any manner.

December 04, 2020
Yag Dutt

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: No