

CRM-M-5608-2021

Date of Decision: 19.8.2021

Vipin Rawat

..... Petitioner

Versus

State of U.T., Chandigarh and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Shakti Mehta, Advocate, for the petitioner.

Mr. A.M. Punchhi, Public Prosecutor for UT, Chandigarh.

Mr. Vipul Sachdeva, Advocate, for respondent No.2.

Rajesh Bhardwaj, J. (ORAL)

Matter has been taken up through video conferencing via Webex facility in the light of the Pandemic Covid-19 situation and as per instructions.

Present petition has been filed under Section 439 Cr.P.C. for grant of regular bail to the petitioner in FIR No.65 dated 15.5.2019 under Sections 363, 366 IPC (Section 376 (2n) IPC and Section 6 of POCSO Act, 2012 added subsequently) registered at Police Station Sarangpur, Chandigarh.

It has been contended that the petitioner and the prosecutrix in this case went away of their own and no offence as alleged had been made out. Precise contention of learned counsel for the petitioner is that author of the FIR is the father of the prosecutrix, whereas the prosecutrix had no malice against the petitioner. It has been further contended that the prosecutrix is the mother of one child and he admits that the petitioner is the biological father of the child of the prosecutrix. Learned counsel for the petitioner further contends that now the matter is settled and the prosecutrix

as well as her father, who is the author of the FIR, both do not want to prosecute the petitioner in the FIR. The petitioner is behind bars since 16.12.2020.

This Court had directed the trial Court to pre-pone the hearing of the case and examine the complainant and the prosecutrix. In pursuance to the same, the trial Court examined both the complainant and prosecutrix and the counsel for the petitioner had placed on record the copy of the examination of both these witnesses. A perusal of the same would show that the prosecutrix has been declared hostile as she did not support the case of the prosecution and the father, who is the complainant had also deposed that the prosecutrix and petitioner are happily married and he does not want to proceed with the prosecution of the case.

Learned counsel for the petitioner submits that as there is no other material evidence against the petitioner, so his incarceration is unwarranted, as the trial would take sufficiently long time in its conclusion.

Learned State counsel though does not dispute the factual position that the material witnesses did not support the case of the prosecution. However, he has vehemently opposed the contentions of learned counsel for the petitioner as the alleged marriage falls within the prohibited relationship. He further submits that at the time of occurrence, the prosecutrix was hardly 16 years of age.

I have heard learned counsel for the parties.

In the peculiar facts and circumstances of the case and without commenting upon the merits of the case, the Court restricts the appreciation of arguments and the record to the prayer for grant of bail, as admittedly, the petitioner is the biological father of the child of the prosecutrix. The father

of the prosecutrix as well as the prosecutrix both have not supported the case of the prosecution. As a result, the Court finds it appropriate that the petitioner should be granted the benefit of regular bail.

Accordingly, the present petition is allowed and the petitioner is ordered to be released on bail to the satisfaction of the concerned trial Court/Duty Magistrate. Nothing said herein shall be treated as an expression of opinion on the merits of the case.

(RAJESH BHARDWAJ)
JUDGE

19.8.2021
sharmila

Whether Speaking/Reasoned	:	Yes/No
Whether Reportable	:	Yes/No