

Ashish

..... Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Ashu Mohan Punchhi, Advocate and
Mr. Viranjeet Mahal, Advocate, for the petitioner.
Mr. M.S.Nagra, Assistant Advocate General, Punjab.
Mr. Sandeep Verma, Advocate, for the complainant.

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.

The present petition has been filed under Section 439 Cr.P.C for grant of regular bail to the petitioner in a case FIR No.221 dated 14.12.2020 registered under Sections 376 IPC at Police Station Jamalpur, District Police Commissionerate, Ludhiana.

It has been contended that the present FIR has been lodged on the statement of the prosecutrix, wherein it was alleged that she is 20 years old and doing diploma in Computer Application from home. It was alleged that maternal aunt of the petitioner, Ashish was living in her neighborhood and the petitioner used to come to the house of his maternal aunt and where she fell in love with him. They both wanted to marry with each other. On 29.8.2020, the petitioner called the prosecutrix at his aunt's house to talk about the marriage, where on promise of marriage, he established physical

relationship with the prosecutrix. It was alleged that maternal aunt of the petitioner was not at home at that time. Thereafter, in the month of October, the petitioner again called her at his aunt's home and established physical relationship with her. Thereafter, he backed out of the promise of marriage on the ground that his parents are not ready and thus, he is unable to honour the promise and refused to marry. The prosecutrix found herself defrauded and registered the present FIR and prayed for taking action against the petitioner. The investigation commenced, challan was presented and the Court took cognizance of the same. The petitioner was arrested on 24.12.2020 and since then he is behind the bars. The petitioner approached the learned Additional Sessions Judge, Ambala for grant of bail and after hearing, declined the same vide its order dated 18.1.2021. Aggrieved by the same, the petitioner approached this Court by way of filing the present petition.

Learned counsel for the petitioner has vehemently contended that both the petitioner and the prosecutrix are major and the crux of the FIR is that the physical relationship between the petitioner and the prosecutrix took place on the basis of the promise made by the petitioner of marrying the prosecutrix. He submits that from the allegations in the FIR itself the consensual relationship between the petitioner and the prosecutrix is writ large. He has argued that in the statement recorded under Section 164 Cr.P.C., the prosecutrix has alleged that the aunt of the petitioner was very much present when the petitioner established physical relationship with her. Thereafter, when the prosecutrix is examined by the trial Court and again she deposed that aunt of the petitioner was present in the home at that time.

He has submitted that in all the three statements i.e. the FIR, statement under Section 164 Cr.P.C. and the statement finally recorded in the Court, there are material contradictions. He has further submitted that there is no medical corroboration of the ocular version given by the prosecutrix as the evidence of the prosecutrix in the attending circumstances is not of sterling quality. It would be unfair to rely upon the simple statement of the prosecutrix only. Learned counsel for the petitioner has relied upon the judgment of Hon'ble the Supreme Court in Parmod Suryabhan Pawar Vs. State of Maharashtra, 2019(9) SCC 608, to state that there cannot be any misconception of facts on the part of the petitioner. He submits that in the overall facts and circumstance, the petitioner deserves to be enlarged on bail as the material witnesses already stand examined and there cannot be any apprehension of tampering with the evidence by the petitioner.

Learned counsel for the complainant has vehemently opposed the submissions made by learned counsel for the petitioner. He submits that the prosecutrix has emphatically deposed that the petitioner raped her. He further submits that medical was conducted after two months of the occurrence. So if the semen is not found on the swab that would not discredit the case of the prosecution and hence, no case for grant of bail to the petitioner is made out.

Learned State counsel has opposed the submissions made by learned counsel for the petitioner and submits that out of total 17 prosecution witnesses, 3 witnesses including the prosecutrix already stand examined. He submits that the prosecutrix has totally supported the case of the prosecution and thus, no case for grant of bail to the petitioner is made

out.

I have heard learned counsel for the parties.

There is no gainsaying that the petitioner is a young boy of 19 years old and is behind bars since 24.12.2020. The veracity of the allegations would be established only on the basis of the evidence to be led by the parties before the trial Court. The merits of the case cannot be commented upon by this Court at this stage. However, in the facts and circumstance of the case the material witnesses have already been examined and 14 witnesses still remain to be examined. Trial would take some time to conclude and hence, the petitioner deserves the concession of bail. As such in the facts and circumstances of the case, the learned counsel for the petitioner has been able to make out a case for grant of regular bail to the petitioner. 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

14.10.2021
sharmila

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