

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

CRM-M No.9570 of 2021 (O&M)

Date of decision: 05.03.2021

Vakil Kumar

....Petitioner

Versus

State of Haryana

....Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Amit Choudhary, Advocate
for the petitioner.

Mr. Deepak Grewal, DAG, Haryana.

ARVIND SINGH SANGWAN J. (Oral)

Prayer in this 2nd petition is for grant of regular bail to the petitioner under Section 439 of the Code of Criminal Procedure (in short 'Cr.P.C.') in FIR No.61 dated 26.03.2019, for offence punishable under Sections 323, 34, 342, 376(2)(n), 376(2)(f), 498-A, 506 of the Indian Penal Code, 1860 (in short 'IPC') registered at Police Station Sadar Tohana, District Fatehabad.

The earlier one was dismissed on 17.09.2020.

Counsel for the petitioner has argued that now the period of more than 05 months has passed and the case is still at the stage of recording the evidence of the prosecution witnesses and the cross-examination of PW-5 has been completed, which is relied upon in this case. It is further submitted that the total custody of the petitioner is 01 year and 10 months and out of 15 PWs, 14 PWs have already been examined and apart from the victim, there is no other private witness.

Counsel for the petitioner has further argued that as per the

allegations in the FIR, registered at the instance of the victim (name not disclosed), against her husband Kuldeep as well as the petitioner Vakil Kumar, the elder brother of the husband of the victim, his wife Sunita and mother Savita, her marriage was performed in the year 2011 and thereafter, it was consummated after 1½ years, when she was aged about 15 years. The allegations against the petitioner are that he had sexually exploited the victim on 11.03.2015 and 23.03.2015. It is further submitted that the marriage of the victim with the brother of the petitioner Kuldeep was performed as per a custom prevalent in rural Haryana whereas the sister of the petitioner was married to brother of the victim namely Naveen in exchange.

Counsel for the petitioner has further submitted that the victim stayed for a long time with the brother of the petitioner namely Kuldeep Singh and in the intervening period, she was blessed with a son, who according to the petitioner is residing with the family of the petitioner. It is further argued that it is own case of the complainant that later on, due to the atrocities committed by her in-laws, she decided to leave her matrimonial home and she left the same and started living with one Sunder in Rajasthan. Counsel for the petitioner has then referred to the statement of the victim, PW5 wherein she has admitted that her marriage with Kuldeep Singh, brother of the petitioner was, in fact, an exchange of marriage as marriage of her brother was solemnized with Kavita, sister of the petitioner. It is also submitted that in the cross-examination, the victim had stated that she was blessed with a male child, who is aged about 05 years. It is further argued that the witness admitted that her marriage was solemnized on 01.03.2013

and it was consummated after 1½ years as per a customary ceremony.

Counsel for the petitioner has further referred to the cross-examination of the victim where she has stated that she was raped in the year 2015 and not in the year 2019. She further admitted that on 13.03.2019, he left the home with Sunder, who is the first cousin of her husband Kuldeep as he was known to her. The victim, thereafter, went to Rajasthan along with Sunder and since then, she is residing with him and never returned back either to matrimonial home or parental home.

Counsel for the petitioner has, thus, argued that in fact, the victim in order to leave the matrimonial home and to stay with Sunder, the brother-in-law (first cousin of her husband Kuldeep Singh) in Rajasthan has, in fact, levelled such allegations to involve the petitioner in this case so that the petitioner's family do not take any legal action in this regard.

Counsel for the State has not disputed the factual position, as per the allegations in the FIR as well as the statement of the victim, who appeared as PW5. It is also not disputed that except PW-5, no other witness has come forward to depose against the petitioner as it is own case of PW-5 that her brother and parents are not supporting her.

Counsel for the State has further argued that out of 15 PWs/14 PWs have already been examined and the prosecution evidence is likely to be concluded.

After hearing the counsel for the parties, without commenting anything on merits of the case, considering the fact that the petitioner is in custody for the last 01 year and 10 months; the victim already stands examined; there is no other private witness to be

examined; the custodial interrogation of the petitioner is not required and the conclusion of the trial will take some time due to COVID-19 situation, this petition is allowed and the petitioner is directed to be released on bail subject to his furnishing bail/surety bonds to the satisfaction of the trial Court/Illaqa Magistrate/Duty Magistrate.

However, it will be open for the prosecution to apply for cancellation of bail of the petitioner, in case he is found involved in any other case or misusing the concession of bail, in any manner.

(ARVIND SINGH SANGWAN)
JUDGE

05.03.2021

yakub

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No