

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

CRM-M-13574 of 2021 (O&M)

Decided on:- March 31, 2021.

Guruparasad Sikka.

.....Petitioner.

Versus

State of Haryana.

.....Respondent.

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

Present:- Mr. Kamal Deep Sehra, Advocate
for the petitioner.

Ms. Gaganpreet Kaur, A.A.G., Haryana.

HARI PAL VERMA, J. (Oral)

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

CRM-9301-2021

Prayer in this application filed under Section 482 Cr.P.C. is for exemption from filing the original Vakalatnama.

Prayer for exemption from filing original Vakalatnama on account of COVID-19 is accepted with the condition that the petitioner shall deposit the same with the Registry within a period of one month from today.

Application stands disposed of.

CRM-M-13574-2021

The petitioner has filed this petition under Section 439 Cr.P.C. for grant of regular bail in FIR No.142 dated 28.12.2020 under Sections 354-A, 354-C and 376(2)(n) IPC registered at Police Station Women West, Gurugram, District Gurugram.

The aforesaid FIR was registered against the petitioner on the basis of a complaint dated 28.12.2020 submitted by the prosecutrix. As per the FIR, the prosecutrix was having a seat in the cabin of petitioner as both of them were working with HDFC ERGO General Insurance Company Limited, EROS Tower, Opposite Nehru Place Metro Station, New Delhi. The petitioner had taken her personal details about her family condition and her family members. The petitioner knew that the husband of prosecutrix met with an accident and was jobless. Her both sons were school going and she was living in a rented accommodation with her husband and children. The petitioner used to take liberty with the prosecutrix and used to pass personal remarks about her features. She used to be detained after office hours on one pretext or the other. The petitioner developed sexual relationship with her against her wishes in the office as she was constantly tortured and harassed sexually. On 23.03.2020, before the lockdown was imposed on account of COVID-19, the petitioner called her to the office on the pretext of fetching laptop and had forcible sexual intercourse with her. On 15.09.2020, the petitioner took her to the lift and touched her inappropriately.

Learned counsel for the petitioner has argued that the petitioner is in custody since 30.12.2020. Challan in the case has been presented in Court on 25.01.2021 and the trial is not likely to be concluded in near future. The petitioner is a young person of 29 years of age, whereas the prosecutrix is a matured lady of 38 years of age and is mother of two children. The petitioner has falsely been framed in the case. The prosecutrix though was offered for medical examination, but she had not undergone the medical

examination. The relationship between the petitioner and the prosecutrix, if any, was consensual in nature.

He has referred to the inquiry report dated 17.12.2020 (Annexure P-2) conducted by the Internal Complaints Committee, where the prosecutrix was working. The said Committee looked into the allegations and concluded that the complaint of sexual harassment is not proved.

Learned State counsel, on instructions from L/ASI Sunny has opposed the bail of petitioner on the ground that the petitioner has sexually exploited the prosecutrix by taking undue advantage of her family circumstances. He was in the knowledge of the fact that the husband of prosecutrix met with an accident and was unemployed and he (petitioner) exploited that situation. He forced the prosecutrix to have sexual relations with him and at times, she was threatened with termination of her services. Thus, there are serious allegations against the petitioner and he is not entitled for bail.

I have heard learned counsel for the parties.

There is no dispute that the petitioner and the prosecutrix were employed in the same establishment. She complained against the petitioner and the matter was inquired into by the sexual harassment Committee. Vide inquiry report dated 17.12.2020 (Annexure P-2), the committee has concluded as under:

“VII) Conclusion:

Basis above mentioned findings complaint of sexual harassment is not proved and the respondent is found not guilty of sexual harassment.

The Facebook Messenger Chats between the complainant and the respondent it appears that both the employees indulged in inappropriate behaviour (sexual intimacy) at workplace against the company's policy.

- 1. Complainant's wrongful accusation as its established that this is not a POSH case and relationship was consensual.*
- 2. Usage of office premises for conducting sexual activity which is a violation of company's code of conduct."*

Since the Committee has found that the petitioner and the complainant are in serious breach of company's code of conduct policy, therefore, the Committee recommended that their employment services must cease to exist with immediate effect, but if they wish to voluntarily resign, then the organization may take a lenient approach to accept their resignation.

There is no medical evidence of the prosecutrix since she refused to undergo medical examination. The allegations against the petitioner are that he has been pressurizing the prosecutrix to have physical relations with him since October, 2019, whereas the present FIR was registered on 28.12.2020. There are allegations that even on 23.03.2020, before the lockdown was imposed on account of COVID-19, the petitioner called her to the office on the pretext of fetching laptop and had forcible sexual intercourse with her, but still the matter was not reported to the police. In this manner, during the course of trial, it would be established that whether the petitioner committed rape upon the prosecutrix or the relations between them were consensual. Therefore, considering the custody of the petitioner and the fact

that the trial is not likely to be concluded in near future, this Court deems it appropriate to admit the petitioner on bail.

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

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

March 31, 2021
Yag Dutt

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned:	Yes
Whether Reportable:	No