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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-22495-2021
Date of Decision: 19.07.2021

Rahul Sharma

..... Petitioner

Versus

State of Haryana

..... Respondent

CORAM: HON'BLE MR. JUSTICE SUDIP AHLUWALIA

Present: Mr. Ivneet Singh Pabla, Advocate,
for the petitioner.

Mr. Bhupender Singh, DAG, Haryana.

SUDIP AHLUWALIA, J. (ORAL)

This is a petition for regular bail filed on behalf of the petitioner under Section 439 Cr.P.C. in case FIR No.60 dated 17.03.2021, under Sections 376/506 of the IPC and Sections 3(2)(v) and 3(1)(s)(r)(w)(i) of Scheduled Castes and Scheduled Tribes Act (in short 'the SC & ST Act'), registered at Police Station Babain, District Kurukshetra.

[2]. The petitioner has remained in detention in the present case for nearly 4 months, since 27.03.2021.

[3]. Before going into the relative merits of the submissions raised on behalf of the petitioner in support of his prayer for bail, it would be appropriate to go through the entire text of the concerned FIR as lodged which is reproduced as follows:-

“To, SHO Police Station Babai

I (name withheld by Court) w/o Pardeep Kumar r/o

Village Falsanda Jattan, Shahabad road Babain. I

belong to Sansi caste.

My husband pardeep kumar's friend namely Rahul Sharma S/o Sant Ram Sharma used to visit our house, being friend of my husband. Some time, there is "Tu-tu-mai-mai" between me and my husband. Rahul Sharma used to make both of us understand. Taking the benefit of this, Rahul Sharma said to me that, Aarti I Love you and you give divorce to Pardeep and marry me, I will keep you happy. He under the pretext of marriage, started physical relation with me. Rahul Sharma used to come to my house in the absence of my husband and forcefully made physical relations with me, now my husband came to know about this. My husband Pardeep turned me out of house. When I told Rahul Sharma, he threatened me, that in case I told anything to anybody, he will kill me and my children. Rahul Sharma forcefully made physical relations with me and threatened to kill me. Strict legal action be taken against him."

[4]. Prayer for bail has been opposed on behalf of the State which has filed its reply by way of an Affidavit of the Deputy Superintendent of Police, Ladwa, Kurukshetra.

[5]. After hearing both sides, this Court proceeds to put on record the following observations:-

(i). A bare perusal of the FIR goes to show that there is no allegation anywhere to the effect that the petitioner at any time had 'forcibly' committed any sexual intercourse with the complainant. On the other hand, her case was that the petitioner had promised to marry her as she was not getting on well with her own husband, and she, therefore, consented for the physical relationship in the expectation of such perspective marriage.

(ii). The FIR itself is silent about the age of the complainant,

but perusal of its vernacular copy goes to show in Column No.6

(c) that her year of birth is 1991, which, therefore, means that she had long ago crossed the age of majority.

(iii). To that extent, this would appear to be a clear-cut case of consensual sex between the parties and a marriage in the circumstances would not be feasible, at least till such a time as the first marriage of the complainant could be dissolved in accordance with law.

(iv). Even till now her marriage is reported to be subsisting. The petitioner in such circumstances cannot be treated as being entirely at fault in the matter, even if the allegation levelled against him is taken to be true on its own face value.

(v). At any rate, the FIR again does not disclose any ingredient of the Sections 3(2)(v) and 3(1)(s)(r)(w)(i) of the SC & ST Act. There is no allegation whatsoever that the petitioner had sought to insult or victimize the complainant purely on account of her belonging to Scheduled Caste, and consequently addition of offences under the SC & ST Act, is surprising to say the least.

[6]. After completion of investigation, Challan against the petitioner has already been submitted. As such, his further detention for an indefinite period would, therefore, not be called for at this stage.

[7]. In these circumstances, without commenting any further on the merits of the present case as a whole, but in view of the detention undergone by the petitioner and the fact that the trial is likely to take its own considerable time due to ongoing Covid-19 Pandemic, the prayer of the

petitioner for regular bail is allowed and he is ordered to be released on regular bail subject to appropriate terms and conditions to the satisfaction of the Ld. Trial Court/Duty Magistrate, concerned.

[8]. Needless to mention, the Ld. Trial Court while finally deciding the case on merits, shall not be influenced by any of the observations recorded in this order.

[9]. Disposed off.

19.07.2021

Bhumika

**(SUDIP AHLUWALIA)
JUDGE**

1. Whether speaking/reasoned: Yes/No

2. Whether reportable: Yes/No