

219

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-24937-2021

Date of Decision: 12.07.2021

Sharukh Khan

Petitioner

Versus

State of Haryana

Respondent

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Diwan S. Adlakha, Advocate for the petitioner.

Ms. Harpreet Kaur, Assistant Advocate General, Haryana.

Mr. Inderjeet Singh, Advocate for the complainant.

AVNEESH JHINGAN, J (Oral):

[1] The matter is taken up for hearing through video conference due to COVID-19 situation.

[2] This is second petition under Section 439 of the Code of Criminal Procedure, 1973 (hereinafter 'Cr.P.C.') for grant of regular bail in F.I.R. No. 11, dated 22nd January, 2021, under Sections 323, 376, 377 of the Indian Penal Code, 1860 (hereinafter 'I.P.C.') (Sections 342, 354, 376-D, 406, 506 and 120-B of IPC were deleted), registered at Police Station Women, Police Station Yamuna Nagar, District Yamuna Nagar.

[3] The earlier petition filed by the petitioner for grant of bail was dismissed as withdrawn on 30th April, 2021.

[4] The brief facts of case are that on complaint received from

the victim-'X' (name withheld), an F.I.R. was registered. As per allegations, victim was having matrimonial dispute with her husband and she was living separately. During this period, petitioner and victim were living in live-in relationship and made physical relation. The victim was thrown out of the house on 2nd December, 2020 by the petitioner and his mother. She started residing separately. On 5th December, 2020, petitioner along with his brother came to the house of victim, she was given intoxicants and thereafter un-natural sex was established with her.

[5] Mr. Diwan S. Adlakha, learned counsel for the petitioner submits initially there were allegations against four persons, on enquiry other co-accused were found innocent and only petitioner was proceeded against hence story is improbable. He relies upon Annexure P-4 to submit that in spite of the incident, prosecutrix was in contact with the petitioner and was worried about his welfare. He further submits that no specific date of incident is mentioned in the F.I.R. Further there is delay in lodging the F.I.R. and there are contradictions in statement recorded under Section 164 of Cr.P.C. and the allegations made in the F.I.R. He further submits that petitioner had bought a truck in the name of victim, due to troubled relations the petitioner asked for returning the truck, resultantly F.I.R. was lodged. It is further submitted that petitioner is in custody since 14th February, 2021 and challan stands presented.

[6] Ms. Harpreet Kaur, Assistant Advocate General, Haryana

submits that there are specific allegations against the petitioner that when she was not within her senses, physical relation was made. She submits that prosecutrix is yet to be examined.

[7] While dealing with the bail matters, this Court uses restrain for dealing with the merits of the case. However, on insistence of learned counsel for the petitioner, the arguments raised are being dealt with only for the purpose of deciding the bail petition.

[8] The contention of unreliability of the story on the basis that other co-accused have been found innocent is not worth acceptance. The other side of the coin is that after enquiry, allegations against petitioner were found reliable. There are specific allegations against the petitioner. The victim in her statement recorded under Section 164 of Cr.P.C. has supported the allegations.

[9] The contradiction in allegation of F.I.R. and statement under Section 164 Cr.P.C. as pointed out by the petitioner would be subject matter of trial. Suffice to say that as per the allegations in F.I.R. and statement under Section 164 of Cr.P.C., the victim stated that on losing her consciousness, she was raped.

[10] The argument that no specific date of incident is mentioned in the F.I.R. is not a factor to be considered at this stage. It is trite law that F.I.R. is not an encyclopedia, it is only an information for initiation of proceedings.

[11] The delay in lodging the F.I.R. in facts of the present case may not be fatal. The petitioner and the victim were in live-in

relationship, it is only after differences, they separated and alleged incident occurred. These circumstances can be contributing factor for delay in lodging the F.I.R.

[12] The reliance on WhatsApp conversation between the petitioner and victim to show that they were in touch even after the incident, needs no comment at this stage. The authentication of the conversation would be established during the trial. The petitioner and victim were not strangers, they had relationship but it is after a point of time they parted ways.

[13] Learned counsel for the petitioner argues that delay in trial is a relevant consideration for grant of bail. The contention is noted to be rejected. In the present case, the F.I.R. is of 4th week of January, 2021, the matter was enquired into, challan presented and the matter is fixed for prosecution witness. There is no inordinate delay in trial.

[14] In rape cases, it is relevant consideration that prosecutrix has been examined or not. In case in hand, she is yet to be examined. Considering the factual background of the case, if the petitioner is enlarged on bail at this stage, he would be in a position to influence the witnesses.

[15] The reasons put forth for false implication of the petitioner only lend support to the allegations of strained relationship between the parties.

[16] Considering the serious allegations and gravity of offence, mere custody cannot be a ground for grant of bail.

[17] The petition is dismissed.

[18] It is clarified that observations made hereinabove shall not
be construed as expression of opinion on the merits of the case.
These are only to dispose of the petition for grant of bail.

[AVNEESH JHINGAN]
JUDGE

12th July, 2021
pankaj baweja

- | | | |
|-------------------------------|---|-----|
| 1. Whether speaking/ reasoned | : | Yes |
| 2. Whether reportable | : | Yes |