

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

(213)

CRM-M-28012-2021(O&M)

Date of Decision: 11.11.2021

Mohammad Usman

--Petitioner

Versus

State of Haryana

--Respondent

CORAM:- HON'BLE MR. JUSTICE RAJESH BHARDWAJ.

Present:- Mr. Afzal Khan, Advocate for the petitioner.

Mr. B.S. Virk, D.A.G., Haryana.

RAJESH BHARDWAJ.J (Oral)

The present petition has been filed under Section 439 Cr.P.C seeking the benefit of regular bail to the petitioner in case FIR No.652 dated 30.9.2020 under sections 346, 323, 328, 342, 376(2)(n) and 506 I.P.C, registered at Police Station, Shivaji Colony, Rohtak.

As per the factual matrix, the present FIR was got registered by the husband of the prosecutrix, wherein it was alleged that his marriage took place with the prosecutrix about 16 years ago. On 28.9.2020 his wife had gone to market for purchasing articles but did not return. He searched her in neighborhood but could not find her. It was further stated that she was 36 years of age and may be traced.

The investigation commenced and on 2.12.2020 an information regarding the prosecutrix was received from Police Station Kutubsher, Saharanpur (U.P.). Police personnel were sent and the prosecutrix was recovered. Thereafter her statement under Section 164 Cr.P.C was recorded and on the basis of which offences under sections 323, 376 I.P.C were added. As a result the petitioner was arrested on 16.12.2020. Petitioner

approached the learned Addl. Sessions Judge, Rohtak for grant of bail, however, the same was declined vide order dated 30.6.2021.

Learned counsel for the petitioner vehemently contends that the petitioner was falsely implicated in the present FIR and no offence, as alleged, is made out against him. It has been further contended that prosecutrix is a major and thus allegations of her victimization by the petitioner are beyond imagination. Counsel submits that though in the statement recorded under Section 164 Cr.P.C the allegations were made against the petitioner, however, the same were afterthought and the deposition was made only in order to falsely implicate the petitioner. Counsel further contends that the bail application of the petitioner was declined by the learned Addl. Sessions Judge, Rohtak primarily on the premise that there are serious allegations against him and in case he is released on bail, the trial may be hampered. Counsel further submits that now the prosecutrix has been examined and she has not supported the case of the prosecution. Counsel has placed on record copy of the deposition of the prosecutrix, who has been examined as PW-2. A bare reading of the same would show that the prosecutrix was declared hostile on the request of Public Prosecutor. Counsel further submits that prosecutrix is a major and as she did not support the case of the prosecution, now the prosecution is left with no other authenticated evidence to prove the allegations against the petitioner. Counsel submits that petitioner is behind bars for the last about one year and in view of the circumstances noticed herein above, his further incarceration is totally unwarranted.

On the other hand, learned State counsel has opposed the submissions made by learned counsel for the petitioner. However, he

candidly affirms the fact that the prosecutrix has not supported the case of the prosecution. State counsel further submits that out of the 14 prosecution witnesses cited only 3 have been examined.

I have heard learned counsel for the parties at length and have gone through the records made available.

Both the prosecutrix and petitioner are major. Petitioner is behind bars for the last about 1 years. Admittedly, prosecutrix has not supported the case of the prosecution. The veracity of the allegations levelled in the FIR would be finally decided by the learned Trial Court after conclusion of the trial.

In the totality of circumstances and without making any observations on merits, present petition is allowed. Petitioner be enlarged on bail subject to satisfaction of Trial Court/Duty Magistrate, concerned. Nothing stated herein shall be treated as an expression on the merits of the case.

(RAJESH BHARDWAJ)
JUDGE

11.11.2021

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Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No