

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

CRM-M-27071-2020 (O&M)

Date of decision : 20.12.2021

Hari Singh

.... Petitioner

Versus

State of Haryana and another

.... Respondents

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Sandeep Kumar Yadav, Advocate and
Mr. Vikram Bishnoi, Advocate
for the petitioner.

Mr. Vishal Kashyap, DAG, Haryana.

Mr. J.P. Sharma, Advocate
for the complainant.

RAJESH BHARDWAJ, J. (ORAL)

CRM-40443-2021

This is an application for impleading Amisha wife of Ashok Kumar, aged 32 years, Village Pota, Tehsil Kanina District Mahendergarh, Haryana as respondent No.2.

For the reasons mentioned in the application, the present application is allowed. Ms. Amisha wife of Ashok Kumar, aged 32 years, resident of Village Pota, Tehsil Kanina District Mahendergarh, Haryana is impleaded as respondent No.2.

Amended memo of parties is taken on record.

CRM-40444-2021

Application is allowed as prayed for.

Annexure R-2/1 is taken on record.

CRM-M-27071-2020

Prayer in the present petition is for grant of regular bail to the petitioner in case FIR No.410 dated 03.12.2019, under Section 346 IPC (later on added Sections 342, 328, 365, 376, 379-A, 506 IPC), registered at Police Station Kanina, District Mahendergarh.

As per the factual matrix of the case, the present FIR was lodged by husband of the prosecutrix namely, Ashok Kumar. It was contended that his wife, who is a housewife, has been enticed away by Hari Singh i.e. the petitioner. His wife was having a sum of Rs.1,50,000/- for depositing that amount on 2nd December, 2019 in Sehlang Bank, District Mahendergarh. He alleged that he was not present at home at that time. Request was made to trace his wife and to take the legal action against the culprits. The prosecutrix was traced out on 4th December, 2019 and her statement under Section 161 Cr.P.C. was recorded. Thereafter, on 4th December, 2019, the statement under Section 164 Cr.P.C. was also recorded. The petitioner was arrested on 11th December, 2019. He approached the learned Additional Sessions Judge, Narnaul for grant of regular bail which was declined by the learned Additional Sessions Judge after hearing both the parties vide his order dated 21st August, 2020. Aggrieved by the same, the petitioner has approached this Court by way of filing the present petition for grant of regular bail.

Learned counsel for the petitioner has contended that the petitioner is a young unmarried boy of 27 years of age, whereas, the prosecutrix is 35 years of age who is a married lady and mother of two

children. He submits that the allegations made in the FIR as well as in statements under Sections 161 Cr.P.C. and 164 Cr.P.C. are totally unbelievable and are nothing but cock and bull story. He submits that the statement under Section 164 Cr.P.C. was recorded on 5th December, 2019 wherein, the prosecutrix alleged that she was enticed away by the petitioner on 2nd December, 2019 and he committed rape upon her and snatched cash of Rs.1,50,000/- as well. However, on the very next day i.e. on 4th December, 2019, her statement under Section 161 Cr.P.C. was recorded wherein, she improved her statement already made under Section 164 Cr.P.C. and deposed that rape was committed upon her in Agra, whereas, there was no whisper regarding rape committed in Agra when she deposed under Section 164 Cr.P.C. He submits that even if the allegations are taken to be true then as both the prosecutrix and the petitioner are of the age of majority, rather, the prosecutrix is elder than the petitioner and hence, at the most, the case in hand is a consensual relationship between the petitioner and the prosecutrix. He submits that in view of overall facts and circumstances of the case, no offence under Section 376 IPC is made out. He has further submitted that now the prosecutrix already stands examined and there cannot be any projected apprehension on the part of the petitioner regarding influencing the petitioner or scuttling the ongoing evidence process. He submits that the petitioner is languishing in jail for last about 02 years and hence, he deserves the concession of bail.

Learned State counsel has opposed the submissions made by learned counsel for the petitioner. He has submitted that there are categorical allegations against the petitioner. He has submitted that the

prosecutrix has supported the prosecution case in her statements under Section 161 Cr.P.C. and 164 Cr.P.C. and now she already stands examined before the trial Court wherein, again she has reiterated the allegations of rape as made in the FIR. However, he submits that out of the total 12 prosecution witnesses, 02 witnesses have been examined including the prosecutrix.

Learned counsel for the complainant has vehemently opposed the submissions made by learned counsel for the petitioner and has submitted that the prosecutrix has duly supported the case of the prosecution and her ocular version is also medically corroborated. He submits that no case for grant of regular bail is made out.

I have heard learned counsel for the parties and perused the records.

Petitioner is behind the bars since 11th December, 2019. The prosecutrix who is a married lady and mother of two children has already stands examined by the trial Court. Learned State counsel has already submitted that in all, there are 12 prosecution witnesses and only 02 witnesses have been examined and hence, there cannot be any apprehension of influencing the prosecutrix by the petitioner.

In the overall facts and circumstances of the case, it is apparent that the trial of the case will take sufficient time and no useful purpose will be served by keeping the petitioner in custody for such a long time. Keeping in view the abovesaid facts, this Court finds that learned counsel for the petitioner has succeeded in making out a case for grant of regular bail. Accordingly, the present petition is allowed and the petitioner is

ordered to be released on bail on his furnishing bail/surety bonds to the satisfaction of the concerned trial Court/Duty Magistrate. Nothing said herein shall be treated as an expression of opinion on the merits of the case.

20.12.2021
m. sharma

(RAJESH BHARDWAJ)
JUDGE

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