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

CRM-M-41994-2021

Date of decision : 11.10.2021

Pawan Kumar

..... Petitioner

versus

State of Haryana

..... Respondent

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present :- Mr. Raman Chawla, Advocate
for the petitioner.

Mr. Apoorv Garg, D.A.G., Haryana.

RAJESH BHARDWAJ, J. (ORAL)

Petitioner has approached this Court for grant of regular bail in case FIR No.40 dated 23.06.2021, under Section 376(2)(n) of Indian Penal Code, 1860 at Police Station Women Fatehabad, District Fatehabad.

It has been contended by learned counsel for the petitioner that the FIR in question was registered by the prosecutrix on the allegation that she is 31 years of age and her marriage was solemnized with one Raj Kumar. Out of this wedlock, two children were born and since 2011, both the husband and wife started living in Fatehabad. She had alleged that she is a labourer and during that period, she came in contact with the petitioner-Pawan. The relationship came to the knowledge of the husband and about 5-6 years ago, her husband left her and went to UP. She alleged that the petitioner-Pawan, started coming to her house and on the pretext of marriage established physical relationship with her. On 14.06.2021, also he committed rape upon her on the pretext of marriage. It was alleged that the petitioner

physically abused her for continuously 10 years. The prosecutrix alleged that she came to know that the petitioner has taken away some girl. On the basis of these allegations, a request was made by her to take action against the petitioner.

The FIR was lodged. Investigation commenced. Apprehending the arrest, he approached learned Additional Sessions Judge, Fatehabad for bail. After hearing the parties, learned Additional Sessions Judge declined the same vide its order dated 29.09.2021. Aggrieved by the same, the petitioner has approached this Court for grant of the pre arrest bail.

Learned counsel for the petitioner contends that the petitioner was falsely implicated and that the allegations made in the FIR are totally false and frivolous. He submits that the complainant is already married and is mother of two children whereas the petitioner is unmarried. Only in order to falsely implicate the petitioner, the FIR has been lodged. The counsel for the petitioner vehemently contends that now the prosecutrix has been examined by the trial Court as PW-1. He has drawn the attention of this Court to the deposition of the prosecutrix, annexed with the petition, wherein the prosecutrix had deposed that she is in live-in-relationship with the accused-Pawan Kumar since 10 years and accused-Pawan Kumar has never committed any rape upon her. On the request of the Public Prosecutor, she was declared hostile.

Learned counsel for the petitioner argued that the petitioner is behind bars since 23.06.2021 and as the material witness i.e. prosecutrix herself has resiled from her statement, his incarceration is totally unwarranted.

Mr. Apoorv Garg, DAG, Haryana for the State opposes the

submissions made by counsel for the petitioner and on instructions from ASI Sunil Kumari, submits that the petitioner is specifically named even in the statement made under Section 164 Cr.P.C. However, he categorically accepts that the prosecutrix has not supported the case of the prosecution. He submits that in all there are 17 prosecution witnesses, out of which 4 have been examined.

I have heard counsel for the parties and perused the record.

I find that the petitioner is behind bars since 23rd June, 2021.

Both the petitioner as well as the prosecutrix are major. The prosecutrix has been declared hostile as she has not supported the case of the prosecution. The trial would take sufficient time for its conclusion.

In the overall facts and circumstances of the case, 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.

(**RAJESH BHARDWAJ**)
JUDGE

11.10.2021

ps-I

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No