

CRM-M-43866-2021

Date of Decision: 27.10.2021

Arvind Kumar

..... Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Rajesh Lamba, Advocate, for the petitioner.

Mr. Manish Bansal, Deputy Advocate General, Haryana.

Rajesh Bhardwaj, J. (ORAL)

Matter has been taken up through video conferencing via Webex facility in the light of the Pandemic Covid-19 situation and as per instructions.

The petitioner has approached this Court praying for regular bail in case FIR No.29 dated 30.3.2021 registered under Sections 376, 506 IPC registered at Police Station Women Police Station, Manesar, District Gurugram.

As per the factual matrix of the case, the FIR in question was lodged by the prosecutrix on the basis of the allegations that she was staying in Flat No.703 with her flat mate. On 29.3.2021, the prosecutrix sent text message to the owner of the PG, Arvind Kumar, the present petitioner for food, he called her back and brought food for her and her flat mate. At 12:30 a.m. Arvind entered into her room without knocking the door and after entering, he brutally removed her clothes and forcefully sexually assaulted her. Thereafter, the present FIR was lodged and prayer was made to take legal action against the culprit. Thereafter, statement of the prosecutrix under Section 164 Cr.P.C. was recorded, wherein she levelled the allegations

against the petitioner. The investigation commenced, the challan was presented and the charges were framed. The trial Court took the cognizance of the same and the petitioner was arrested on 31.3.2021.

Learned counsel for the petitioner vehemently contended that the prosecutrix is major and the relationship between the petitioner and the prosecutrix was consensual and no offence as alleged in the FIR was made out against the petitioner. He would submit that the petitioner was falsely implicated in the present FIR. Learned counsel for the petitioner has submitted that the innocence of the petitioner is evident from the fact that the prosecutrix was examined by the trial Court as PW-1, copy of which has been annexed with the present petition. The prosecutrix has deposed before the trial Court that the petitioner was the owner of the PG and she was friendly with him. She has deposed that she and Arvind, the petitioner developed physical relationship with their mutual consent and free will. Whatever happened between them that took place out of their free will. She has completely denied that the petitioner had sexually exploited her. As a result, on request of learned Public Prosecutor, she was declared hostile. Learned counsel for the petitioner further submits that as the material witness has not supported the case of the prosecution, incarceration of the petitioner is not warranted.

Learned State counsel though has opposed the submissions made by learned counsel for the petitioner, however, he has candidly accepted that the prosecutrix has not supported the case of the prosecution. He submits that in all there are 15 prosecution witnesses.

Heard learned counsel for the parties.

In the overall facts and circumstances of the case, without going into the merits of the case and the fact that the material witness has not supported the case of the prosecution, I am of the opinion that the petitioner be enlarged on bail. The trial would take some time to conclude. Accordingly, the present petition is allowed and the petitioner is ordered to be released on bail 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

27.10.2021

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Whether Speaking/Reasoned	:	Yes/No
Whether Reportable	:	Yes/No