

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

(229)

CRM-M-46563-2021

Date of Decision: 10.11.2021

Jaswinder Singh @ Kala

--Petitioner

Versus

State of Punjab

--Respondent

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

Present:- Mr. Gourav Goel, Advocate for the petitioner.

Ms. Sakshi Bakshi, A.A.G., Punjab.

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 present petition has been filed under Section 439 Cr.P.C seeking the benefit of regular bail to the petitioner in case FIR No.48 dated 29.4.2021 under sections 376 and 506 I.P.C, registered at Police Station, Sadar Malout, District Sri Muktsar Sahib.

As per the factual matrix, the present FIR was got registered by the victim herself on the basis of the allegations as mentioned in the FIR. It was alleged that her marriage was solemnized about 17 years ago with Gurdas Singh and she is mother of two children, who are 16 years and 12 years of age. It was alleged that her husband is a mason and Prabhjot Kaur daughter of Gurmit Singh used to visit her to get the clothes stitched. Her brother Jaswinder Singh @ Kala i.e. the present petitioner used to take and drop her and in this way she got acquainted with him. It was alleged that about 2 ½ years ago the petitioner-accused took her to his house and there

he established physical relations with her without her consent. Thereafter he started threatening the complainant and kept on making the forcible physical relations. Present FIR was lodged for taking legal action against the petitioner.

The petitioner was arrested on 13.4.2021. He approached learned Addl. Sessions Judge, Sri Muktsar Sahib for the grant of bail but the same was declined vide order dated 29.9.2021. Aggrieved by the same, petitioner has approached this Court for grant of bail.

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 the physical relations between the petitioner and the complainant were consensual and there cannot be any misconception of the fact on the part of the petitioner and hence no offence under Section 376 I.P.C is made out against the petitioner. Counsel has also drawn the attention of this Court to the statements made by the complainant and her husband suffered before the Trial Court during the trial. Counsel submits that the prosecutrix as also her husband did not support the case of the prosecution and thus both were declared hostile. Counsel further contends that the innocence of the petitioner is *writ large* in view of the overwhelming record available. Counsel submits that in view of the facts and circumstances of the case, custody of the petitioner is totally unwarranted.

On the other hand, learned State counsel submits that there are specific allegations against the petitioner of committing rape with the prosecutrix/complainant and threatening her. She submits that trial is going on and out of 14 prosecution witnesses 2 already stand examined. However,

she candidly affirms the fact that the prosecutrix as well as her husband have not supported the case of the prosecution.

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

Both the prosecutrix/complainant and petitioner are major. Petitioner is behind bars since 13.4.2021. Admittedly, prosecutrix and her husband have not supported the case of the prosecution.

In view of the peculiar facts and circumstances, I find that the veracity of the allegations levelled in the FIR would be established only 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

10.11.2021

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