

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

-.-

CRM-M-42238-2020 (O&M)

Date of decision : 06.01.2021

Ramandeep Singh

.....Petitioner

Vs.

State of Haryana

.....Respondents

CORAM: HON'BLE MRS. JUSTICE ALKA SARIN

Present: Mr. A.P.S Deol, Sr. Advocate, with
Mr. Himmat Singh Deol, Advocate for the petitioner.

Mr. Naveen Singh Panwar, DAG, Haryana.

ALKA SARIN, J. (ORAL)

Heard through video conferencing.

The present petition has been filed under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail to the petitioner in FIR No.270 dated 08.09.2020 under Sections 376(2)(n), 506 and 34 of the Indian Penal Code, 1860 registered at Police Station Agroha, District Hisar.

Learned counsel for the petitioner would contend that the Prosecutrix is 22 years of age and she had been in a consensual relationship with the petitioner for the last two years. The Prosecutrix is a mature and educated lady and has passed BSc examination in the year 2018 and was preparing for SSC from an institute at Hisar. Learned counsel for the petitioner would further contend that there is documentary evidence available that the Prosecutrix and the petitioner had voluntarily been spending days and nights together in Hotel Grand Inn at Hisar during

the period of 2018 and 2020 and as many as 42 in and out entries in the visitor's register of the said hotel have been made. Learned counsel for the petitioner would thus contend that the relationship between the Prosecutrix and the petitioner was a long standing consensual relationship. Learned counsel for the petitioner has relied upon judgment of Hon'ble Supreme Court in the case of *Dhruvaram Murlidhar Sonar vs The State of Maharashtra, 2019(18) SCC 191* to contend that where there was a long consensual physical relationship between the parties and the offence under Section 376 IPC would not be constituted.

Learned State counsel, on instructions from ASI Anju Bala, is not in a position to deny that there are 42 in and out entries made in the visitor's register of Hotel Grand Inn during the period 2018 and 2020. Learned counsel of the State further states that there is no other case pending against the petitioner.

I have heard learned counsel for the parties.

As per the allegations in the FIR the petitioner has alleged to have raped the complainant on 16.6.2018 and had thereafter promised to marry the Prosecutrix. It has been further alleged that 28.03.2020 the petitioner again took the Prosecutrix to a hotel and committed a bad act upon her and thereafter told her that he would not marry her and in case she told anyone about the said acts he would kill her and her family.

The petitioner and the Prosecutrix had visited a hotel on numerous occasions and prima facie appear to have been in a long standing consensual relationship inasmuch as there are 42 entries of them having been spent days and nights together at the Hotel Grand Inn at

Hisar during the period 2018 and 2020. The copies of the entries from the hotel register alongwith the ID proof of the Prosecutrix given at the time of the hotel booking have been appended with the petition. The state counsel was also not in a position to deny that there are numerous entries in the hotel register bearing the signature of the Prosecutrix on each occasion. A perusal of the FIR reveals that the complainant has alleged that after committing a bad act upon her on 16.06.2018 the petitioner had told her that he would marry her. The allegation is not that the relationship was established on the false promise of marriage and even the hotel entries speak otherwise.

The Hon'ble Supreme Court in the case of **Dhruvaram Murlidhar Sonar (supra)** has held as under:-

“23. Thus, there is a clear distinction between rape and consensual sex. The court, in such cases, must very carefully examine whether the complainant had actually wanted to marry the victim or had mala fide motives and had made a false promise to this effect only to satisfy his lust, as the later falls within the ambit of cheating or deception. There is also a distinction between mere breach of a promise and not fulfilling a false promise. If the accused has not made the promise with the sole intention to seduce the prosecutrix to indulge in sexual acts, such an act would not amount to rape. There may be a case where the prosecutrix agrees to have sexual intercourse on account of her love and passion for the accused and not solely on account of the misconception created by accused, or where an accused, on account of circumstances which he could not have foreseen or which were beyond his control, was unable to marry her despite having every intention to do. Such cases must be treated

differently. If the complainant had any mala fide intention and if he had clandestine motives, it is a clear case of rape. The acknowledged consensual physical relationship between the parties would not constitute an offence under Section 376 of the IPC.”

In view of the above and considering the fact that the trial is likely to take some time to conclude especially in view of the prevailing conditions on account of COVID-19 Pandemic, no useful purpose would be served by keeping the petitioner behind the bars any further. Without commenting upon the merits of the case, I deem this to be a fit case for grant of regular bail to the petitioner. The petitioner is directed to be released on bail subject to his furnishing bail bonds/surety bonds to the satisfaction of the Illaqa Magistrate/Duty Magistrate/Trial Court concerned.

However, the Prosecution will always be at liberty to apply for cancellation of bail in case the petitioner is found to be misusing the concession of bail in any manner.

It is also made clear that any observation made herein shall not be treated as an expression of opinion on the merits of the case.

Disposed off.

January 06, 2021
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(ALKA SARIN)
JUDGE

NOTE:

Whether speaking/non-speaking: Yes/No
Whether reportable: Yes/No