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

CRM-M-47254-2021 (O&M)

Date of decision : 20.12.2021

Sikander @ Kala

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Rajat Mor, Advocate for the petitioner.

Mr. Manish Dadwal, AAG, Haryana.

VIKAS BAHL, J. (ORAL)

CRM-43769-2021

Application is allowed, as prayed for.

Statement of prosecutrix/complainant recorded before the trial Court on 20.12.2021 (Annexure P-4) is taken on record, subject to all just exceptions.

Main case

Prayer in the present petition is for grant of regular bail to the petitioner in FIR No.128 dated 22.04.2021 registered under Sections 376 (2)(n), 376(D), 406, 506 of the Indian Penal Code, 1860 and Section 25 of the Arms Act, 1959 (Section 201 of IPC has been added later on) at Police Station Sadar Narwana, District Jind.

Learned counsel for the petitioner has submitted that in the present case, the petitioner has been falsely implicated on account of there being a money dispute between the petitioner and husband of the prosecutrix. It is submitted that as per FSL report, the semen could not be detected on any of the exhibits. It is also argued that the prosecutrix has been examined and as per her statement, she had stated that the petitioner alongwith other co-accused used to visit their house frequently to purchase buffaloes from the husband of the prosecutrix and that her husband had some financial dispute going on with the petitioner and the other co-accused and the petitioner did not commit any wrong act with her, at any given point of time. The said prosecutrix had been declared hostile and even in her cross-examination, she had stated that she had not filed any complaint before the police and the police had taken her signatures on blank papers. It is further submitted that the petitioner has been in custody since 23.04.2021 and in the present case, there are 14 witnesses out of which, only two have been examined and thus, the conclusion of the trial is likely to take time, moreso, in view of COVID-19 pandemic. He has further contended that as per MLR, there is no injury suffered/present on the face, back, breast and abdomen or on Vulva.

On the other hand, learned State Counsel has opposed the present petition for grant of regular bail to the petitioner and has submitted on instructions from SI Rajesh, that the prosecutrix had given statement under Section 164 of Cr.P.C. in which she had stated that the

petitioner and the other two co-accused had raped her. It is also submitted that in the MLR, it had been mentioned that possibility of sexual assault cannot be ruled out. It is also contended that reason for there being no semen detected as exhibits was because of delay in reporting the matter. He has further pointed out that the said PW2 in her cross-examination after being declared as hostile had admitted the fact that she had given statement before the Magistrate under Section 164 of Cr.P.C. It is also argued that the petitioner is involved in nine more cases.

Learned counsel for the petitioner, in rebuttal to the same has submitted that none of the other cases are with respect to the offences similar to the offences in the present case and the petitioner is on bail in all the other cases. He has relied upon the judgment of Hon'ble Supreme Court in ***“Maulana Mohd. Amir Rashadi vs. State of U.P. and another”***, reported as ***2012 (2) SCC 382*** to contend that the facts and circumstances of the present case are to be seen and the bail application of the petitioner cannot be rejected solely on the ground that the petitioner is involved in another case. The relevant portion of the said judgment is reproduced hereinbelow:-

“As observed by the High Court, merely on the basis of criminal antecedents, the claim of the second respondent cannot be rejected. In other words, it is the duty of the Court to find out the role of the accused in the case in which he has been charged and other circumstances such as possibility of fleeing away from the jurisdiction of the Court etc.”

This Court has heard the learned counsel for the parties and

has perused the paper book.

It is not in dispute that as per the FSL report, it has been found that semen could not be detected on any of the exhibits which had been sent for examination. It is also not in dispute that the prosecutrix had appeared as PW2 and in her examination-in-chief, she had submitted that the petitioner and the other co-accused used to come to the house of the prosecutrix to purchase buffaloes from her husband and there were some financial disputes between the husband of the prosecutrix and the accused persons and had specifically stated that the petitioner did not commit any wrong acts with her, at any point of time. Even in her cross-examination, she had stated that the police had taken her signatures on a blank paper and she had not given any complaint to the police. Even as per the MLR, it is mentioned that there is no injury either externally or internally. The petitioner has been in custody since 23.04.2021 and there are as many as 14 witnesses out of which 12 witnesses are still to be examined and thus, the conclusion of the trial is likely to take time, moreso in view of the COVID-19 pandemic.

Keeping in view the abovesaid facts and circumstances and also in view of law laid down in judgment passed in **Maulana's** case (Supra), this Court deems it appropriate to allow the present petition and grant bail to the petitioner.

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 and subject to

his not being required in any other case.

However, nothing stated above shall be construed as a final expression of opinion on the merits of the case and the trial would proceed independently of the observations made in the present case which are only for the purpose of adjudicating the present bail application.

All the pending miscellaneous applications, if any, shall stand disposed of in view of the abovesaid order.

20.12.2021

Pawan

**(VIKAS BAHL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No