

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

CRM-M No.43463 of 2020 (O&M)

Date of Decision:04.08.2021

(Heard through VC)

Naresh Kumar

...Petitioner

Versus

State of Haryana

...Respondent

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Dr.Anmol Rattan Sidhu, Sr. Advocate with
Mr. Pratham Sethi, Advocate
for the petitioner.

Mr. Manish Dadwal, AAG, Haryana.

JAISHREE THAKUR, J. (ORAL)

This petition has been filed under Section 439 Cr.P.C. for grant of regular bail to the petitioner in case FIR No.59 dated 25.07.2020 under Sections 376 (2) (N)/328/450/506/509 of IPC (Section 34 & 313 IPC deleted) registered at Police Station Women West, District Gurugram.

Learned Senior Counsel for the petitioner herein would contend that the petitioner has been falsely implicated in the said matter and is in custody since 08.10.2020. It is further contended that there was a consensual relationship between the complainant and the petitioner and only after petitioner got married to someone else, the FIR came to be registered. It is submitted that the matter has been investigated and statement of the prosecutrix has been recorded in chief. However, the matter is now being delayed only on account of application under Section 319 Cr.P.C. having

been preferred which is yet to conclude. It is further submitted that the FIR itself is not maintainable as failure to marriage in a consensual relationship without any misconception of fact does not amount that rape has been committed upon complainant by the accused. In support of his contention, he relies upon the judgment rendered by the Hon'ble Supreme Court in ***Maheshwar Tigga vs. State of Jharkhand 2020(4) RCR(Crl.) 469*** wherein the Hon'ble Supreme Court acquitted the accused from the charges of rape, while holding that though the consent given under the misconception of fact is no consent in eyes of law, however, the said misconception of fact has to be in proximity of time to occurrence and cannot be spread over long period of time. In the present case, the prosecutrix remained in relationship with the petitioner for about 6 years, which fact is evident from the photographs and the chat messages available on record, however, raised the allegations of rape only after the petitioner herein solemnized marriage with another girl. He further relies upon the judgments rendered by the Hon'ble Supreme Court rendered in ***Dr. Dhruvaram Murlidhar Sonar Vs. State of Maharashtra and others AIR 2019 SC 327*** and ***Pramod Suryabhan Pawar Vs. State of Maharashtra and another (2019) 9 SCC 608*** wherein the Hon'ble Supreme Court in similar circumstances where the relationship originated in a love affair, developed over a period of time accompanied by physical relations, consensual in nature, but the marriage could not fructify because the parties belonged to different castes and communities, quashed the proceedings. It is also submitted that the investigation has been completed and challan stands presented, therefore, custody of the petitioner would no longer be required.

Learned counsel for the respondent-State would oppose grant of bail to the petitioner by contending that the allegations levelled against him are serious in nature, however, he does not dispute the fact that investigation has been completed and challan stands presented.

I have heard counsel for the parties. Keeping in view the fact that investigation has been completed and challan stands presented and the complainant has been examined in chief, no useful purpose would be served in keeping the petitioner behind bars. The instant petition is allowed and the petitioner is directed to be released on regular bail on execution of personal/surety bond of Rs.2 lakhs each to the satisfaction of concerned trial Court/Duty Magistrate with a condition that the petitioner herein will not contact complainant in any manner whatsoever and as well as will not enter into Gurugram except for the purpose of his appearance in the Court itself. However, any observation made herein shall not be construed to be an expression on merits of the case.

(JAISHREE THAKUR)
JUDGE

August 04, 2021
Pankaj*

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No