

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

CRM-M-4813-2022

Date of decision : 10.02.2022

Vishal @ Sonu

.... Petitioner

Versus

State of Haryana

.... Respondent

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Ms. Varuna Singh, Advocate
for the petitioner.

Mr. Vishal Kashyap, DAG, 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.

Prayer in the present petition is for grant of regular bail to the petitioner in case FIR No.118 dated 27.04.2021, under Sections 376-D, 506 IPC (Section 376-D deleted during investigation and Section 376 IPC added), registered at Police Station Sector-6, Bahadurgarh, District Jhajjar.

As per factual matrix of the case, the present FIR was lodged by the prosecutrix (name concealed). It was alleged that her husband died around 05 years ago due to some disease and she had two sons. The talks of her marriage was going on with Sonu son of Randhir-petitioner. She and Sonu used to talk on Mobile Nos.9718815884 and 9911952904. On 24.04.2021, petitioner-Sonu asked her to come to Bahadurgarh. On this,

Sonu's uncle's son namely, Monty came on motorcycle at Sonipat to take her in the evening at about 10:00 pm. She accompanied him on motorcycle for Bahadurgarh and on the way, oil of motorcycle got finished. Thereafter, Sonu came to take her in Swift Car and in the night at around 1:00 AM, they reached Bahadurgarh and Sonu took her to his flat where they stayed in the night. There in the flat another boys Mohit and Monty also came and all of them committed wrong act with her in the flat itself. In the morning, Sonu left her at Sonipat in a Swift Car. He threatened to kill her in case she disclosed anything about the same. The FIR was lodged to take the legal action against the culprits. Petitioner was arrested on 24th July, 2021. Thereafter, he approached learned Additional Sessions Judge, Jhajjar for the grant of bail, who after hearing counsel for the parties, declined the same vide his order dated 10th December, 2021. Aggrieved by the same, petitioner has approached this Court by way of filing the present petition.

Learned counsel for the petitioner has vehemently contended that petitioner has been falsely implicated in this case. She submits that petitioner and the prosecutrix are of the age of majority and she is mother of two children. She further submits that from the bare allegations in the FIR, it is apparent that admittedly, as per her, talks of her marriage was going on with the petitioner. She further submits that if the rest of the allegations are also believed then at the most, it is a case of consensual nature and hence, no offence under Section 376 IPC is made out against the petitioner in view of the statutory provisions and various judicial precedents of the Hon'ble Supreme Court. Learned counsel has further drawn the attention of this Court to FIR No.164 dated 22.05.2021, under Sections 34 and 384 IPC, at

Police Station Sector-6 Bahadurgarh, District Jhajjar. She submits that the prosecutrix made blatant attempt in blackmailing the petitioner by demanding Rs.2,00,000/- for entering into a compromise with the petitioner. She submits that father of the petitioner reported the same to the police and the prosecutrix was caught red-handed with the denomination of the money given to the complainant with permission of raiding team. She submits that even in the present case charges are framed and the prosecutrix is being summoned by the trial Court, however, she is delaying the trial by not appearing before the trial Court. She has submitted that in the overall facts and circumstances, false implication of the petitioner is writ large and hence, he deserves to be enlarged on bail.

Learned State counsel has opposed the submissions made by learned counsel for the petitioner. He submits that though, petitioner is behind the bars since 24.07.2021, however, there are allegations of rape against the petitioner. He has submitted that in all, there are 19 prosecution witnesses, out of which, none has been examined till date. He does not dispute the lodging of abovesaid FIR No.164 dated 22.05.2021 against the complaint. However, the same is pending adjudication.

I have heard learned counsel for the parties and perused the records.

Admittedly, petitioner and the prosecutrix are of the age of majority. Petitioner is behind the bars since 24.07.2021. Whether in the facts and circumstances, offence under Section 376 IPC is attracted or not that is totally the subject matter of the trial Court to be decided after the appreciation of the evidences to be led by both the parties. However, in the

overall facts and circumstances of the case, it is apparent that the trial of the case will take sufficient time and no useful purpose will be served by keeping the petitioner in custody for such a long time. Keeping in view the abovesaid facts, this Court finds that learned counsel for the petitioner has succeeded in making out a case for grant of regular bail. 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. Nothing said herein shall be treated as an expression of opinion on the merits of the case.

10.02.2022
m. sharma

(RAJESH BHARDWAJ)
JUDGE

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