

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

CRM-M-7009-2022

Date of Decision: 23.2.2022

Sonu

..... Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. J.P. Sharma, Advocate, for the petitioner.

Mr. Vishal Kashyap, Deputy Advocate General, 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 the grant of regular bail to the petitioner in a case FIR No.292 dated 18.8.2021, registered under Sections 376(2)(n), 452, 354-D, 506 IPC and Section 67(A) of IT Act, 2000, at Police Station Nangal Chaudhary, District Mahendergarh.

As per factual matrix of the case, the FIR in question was lodged by the prosecutrix herself (name concealed). Sum and substance of the allegations made in the FIR are that the prosecutrix is 32 years of age and doing the household work. She has three children, two daughters and one son and her husband Naresh Kumar is a labourer. The petitioner Sonu was the neighbour and brother-in-law of the prosecutrix in relation. He started talking to the prosecutrix and thereafter started visiting their house. Lateron, he forcibly established physical relationship with her and made her objectionable videos in his mobile. Subsequently, he started exploiting the

prosecutrix by blackmailing her on threat that in case she refuse to have physical relationship with him he would viral her videos made in his mobile. The prosecutrix told the same to her husband, who tried to make Sonu understand but rather Sonu manhandled her husband and refused to mend his ways. Resultantly, the present FIR was lodged to take legal action against the culprit. The petitioner was arrested on 18.8.2021. He approached the learned Additional Sessions Judge, Narnaul for grant of bail, who after hearing the parties, declined the same vide its order dated 20.1.2022. Aggrieved by the same, the petitioner approached this Court by way of filing the present petition for grant of regular bail.

Learned counsel for the petitioner has vehemently contended that the petitioner has been falsely implicated in this case. He submits that the petitioner is a young boy of 22 years, whereas, the prosecutrix is a 32 years old married lady and mother of three children. He further submits that from the allegations made in the FIR, it is evident that the petitioner is the brother-in-law of the prosecutrix. He submits that even if the allegations made in the FIR are assumed to be true, then also the relationship between both the petitioner and the prosecutrix, would be at the most a consensual one, in such a situation the offence under Section 376 IPC would not be attracted as the consent of the prosecutrix was not obtained on the misconception of the facts. Even otherwise story put up by the prosecutrix is totally improbable. He has further submitted that the innocence of the petitioner is further strengthened from the fact that now the prosecutrix has been duly examined by the learned trial Court and she has not supported the case of the prosecution. He has placed on record the copy of her testimony and has invited the attention of this Court to the same, wherein, the

prosecutrix while appearing as PW-1 has deposed before the trial Court that in fact, there was a brawl between her and Jagmal father of the accused over a joint wall on 17.8.2021. The dispute arose between both the families and she went to Police Station alongwith her husband for reporting the matter. The police obtained her signatures on the blank paper and contents of the statement before the police was never read over to her. She further deposed that accused who was present through VC had not committed any sexual intercourse with her. She was declared hostile on request of learned Public Prosecutor. Learned counsel for the petitioner submits that when the prosecutrix, who is of the age of the majority has herself not supported the case of the prosecution, further incarceration of the petitioner is totally unwarranted and hence, he deserves to be enlarged on bail.

Learned State counsel has opposed the submissions made by learned counsel for the petitioner and on instructions from ASI Rajwanti submitted that there are categorical allegations levelled by the prosecutrix against the petitioner. He submits that in all there are 13 prosecution witnesses, out of which only one i.e. the prosecutrix has been examined so far. He candidly acknowledges that the prosecutrix has not supported the case of the prosecution.

Heard.

Admittedly, both the petitioner and the prosecutrix are of the age of the majority. The prosecutrix is 32 years of age and a married woman. Though in the FIR the allegations are made against the petitioner of having forcible physical relationship with the prosecutrix, however, she has been examined by the trial Court, where she has totally disowned her statement made during the investigation and thus, she has not supported the

case of the prosecution. Resultantly, she has been declared hostile. The veracity of the allegations is totally in the domain of the learned trial Court to be inferred on the basis of evidence to be led before it by the parties. This Court refrains itself from commenting upon the merits of the case, however, confines itself to the bail of the petitioner. The trial of the case will take sufficiently long time and no useful purpose will be served by keeping the petitioner in custody for such a long time. In the overall facts and circumstances of the case, I am of the opinion that learned counsel for the petitioner has been able to make out a case for grant of regular bail to the petitioner. Accordingly, the present petition is allowed and the petitioner is ordered to be released on bail 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.

23.2.2022
sharmila

(RAJESH BHARDWAJ)
JUDGE

Whether Speaking/Reasoned	:	Yes/No
Whether Reportable	:	Yes/No