

CRM-M-8473-2022
Date of decision: 01.04.2022

MUKESH @ MONU

...PETITIONER

VERSUS

STATE OF HARYANA

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE VIVEK PURI

Present: Mr. Rajwant Singh Chahal, Advocate for the petitioner.

Mr. Zorawar Singh Chauhan, DAG, Haryana.

VIVEK PURI, J. (ORAL)

Custody certificate of the petitioner has been circulated today and the same is taken on record.

Mukesh @ Monu-petitioner is seeking regular bail in the case bearing FIR No. 281 dated 14.08.2021, under Sections 376(2)(n)/328/363/346 IPC, 1860, registered at Police Station Sadar Fatehabad, District Fatehabad.

The FIR has been registered on the basis of the statement of the husband of the prosecutrix alleging that on 13.08.2021, the prosecutrix along with 1 ½ year old child went missing from the house. The prosecutrix was stated to be aged about 27 years.

Learned counsel for the petitioner contends that the statement of the prosecutrix has been recorded, the petitioner is in custody for a period of 07 months and 11 days and not involved in any other case. Although, in the statement which was recorded at the time of the recovery, the prosecutrix has stated that the petitioner had committed wrong act with her but she had gone to Shimla with the petitioner along with minor child on her own consent. Furthermore, the history given by the prosecutrix at the time of her medical examination is also indicative of the fact that it was a case of consensual relationship.

Learned State counsel has opposed the bail application on the score

that in the statement under Section 164 Cr.P.C, the prosecutrix has stated that she was made to smell some intoxicant substance and the petitioner had developed physical relations by threatening her. She has supported the prosecution version in her statement before the trial Court.

Although, in the statement recorded at the time of recovery and in the statement under Section 164 Cr.P.C, the prosecutrix has levelled the allegations of rape against the petitioner but significantly, in the statement which was recorded at the time of recovery on 19.08.2021, it has been categorically stated that she had gone to Shimla along with minor child with the petitioner on her own consent. Furthermore, at the time of her medical examination, the history given was of sexual assault by the petitioner who was her boyfriend and they were known to each other for a period of two months. The said history is indicative of consensual relationship between the petitioner and prosecutrix. The statement of the prosecutrix has already been recorded during the course of trial. The petitioner is in custody for a period of 07 months and 11 days. The prosecutrix is aged about 27 years. The controversy as to whether it was a case of consensual relationship or not, will be a debatable and moot point during the course of trial. As such, sufficient mitigating circumstances are made out to extend the concession of the bail to the petitioner.

Without expressing any opinion on the merits of the case, the instant petition is allowed. The petitioner is ordered to be released on bail on his furnishing requisite bail bonds to the satisfaction of the learned trial Court/Duty Magistrate concerned.

The petition is allowed accordingly.

01.04.2022
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(VIVEK PURI)
JUDGE

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No