

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

CRM-M-11260-2021

Date of decision : 15.02.2022

Amandeep Singh

.... Petitioner

Versus

State of Punjab

.... Respondent

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Kanwalvir Singh Kang, Advocate
for the petitioner.

Ms. Sakshi Bakshi, AAG, Punjab.

Mr. Kulwinder Singh Dhillon, Advocate
for the complainant.

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.152 dated 08.10.2020, under Sections 376, 506 of the Indian Penal Code, registered at Police Station Passiana, District Patiala.

As per factual matrix of the case, the present FIR was lodged by the prosecutrix (name concealed) wherein it was alleged that she got married 10 years ago with Kulwant Singh son of Darbara Singh and blessed with one daughter out of the marriage. The house of petitioner Amandeep Singh was near to her house. He allured her and established physical

relations with her from the last three years. On 24.09.2020, Amandeep Singh (petitioner) asked her to sleep on the terrace and when she denied, he threatened to defame her and due to fear, she slept on the terrace and her husband on that night had gone to water the fields. At about 10:00 PM, Amandeep Singh came to her and raped her against her wishes. On resistance, he had beaten her and gave her injuries on right eye. He also threatened her to be killed. Aggrieved by the conduct of the petitioner in threatening and raping her against her wishes, the prosecutrix approached the police and lodged the present FIR with a request to take legal action against the petitioner. The investigation commenced and the petitioner was arrested on 08.10.2020. Thereafter, he approached the learned Sessions Judge, Patiala for grant of bail, who after hearing counsel for the parties, dismissed the same vide her order dated 01.02.2021.

Learned counsel for the petitioner vehemently contended that the present case is nothing but an abuse of the process of the court. He submits that in the facts and circumstances of the case, at the most, the relationship between the petitioner and the prosecutrix is consensual one. Both are of the age of majority and there cannot be said to have any misconception of the fact on the part of the petitioner. He has drawn the attention of the Court to the statement of her husband recorded under Section 161 Cr.P.C. wherein, the husband has recorded that at about 11:00 PM when he returned to his home, he heard some noise from the terrace. On reaching there he saw Amandeep Singh was lying with his wife in the bed and he was beating her. He submits that the statement of the husband is totally unbelievable. He has further submitted that charges were framed in

this case on 18th April, 2021 and thereafter, the trial Court had adjourned the case for number of times for the examination of the prosecutrix. However, despite number of opportunities granted till date, the prosecutrix has not come forward for her examination. He has referred to the zimni orders of the trial Court wherein the case was adjourned four times. Either the prosecutrix is seeking exemption or she remained absent. He has also drawn the attention of this Court to the orders wherein the trial Court had to issue bailable warrants with one surety of Rs.5,000/- for securing her presence. He submits that from the facts and circumstances of the case and the conduct of the prosecutrix it is enough to conclude that the same is being done only to prolong the incarceration of the petitioner behind the bars. He has relied upon the judgment titled as Pramod Suryabhan Pawar Vs. The State of Maharashtra and others (2019) 9 SCC 608. He further submits that there are no other cases against the petitioner and in the present case also he has been falsley implicated. He submits that in the overall facts and circumstances of the case, petitioner deserves to be enlarged on bail.

Learned State counsel submits that there are specific allegations against the petitioner wherein the petitioner has established physical relationship with the prosecutrix without her consent. She acknowledged the fact that the charges were framed on 18.04.2021, however, till date, the prosecutrix could not be examined even after the order passed by this Court.

Learned counsel for the complainant submits that there are serious allegations against the petitioner and hence, he deserves no leniency.

I have heard learned counsel for the parties and perused the

records.

Petitioner is behind the bars since 08.10.2020. In the facts and circumstances of the case when both the petitioner and the prosecutrix are of the age of majority, whether the offence under Section 376 IPC is attracted or not is totally a subject matter of the trial, to be inferred by the trial Court on the appreciation of the evidence to be led before it by the parties. However, from the date of framing of charge till date the prosecutrix has not come forward for her examination. This Court adjourned the case number of times for examination of the prosecutrix, however, the position remains the same. In the overall facts and circumstances of the case, 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.

15.02.2022
m. sharma

(RAJESH BHARDWAJ)
JUDGE

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