

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

**CRM-M-10303-2022
Date of decision : 15.03.2022**

Dharampal

.... Petitioner

Versus

State of Haryana

.... Respondent

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Sanjeev Kodan, 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.0043 dated 06.02.2021, under Sections 354, 451, 506 and 376 (added later on) of the Indian Penal Code, 1860, registered at Women Police Station, Jhajjar, District Jhajjar.

As per the factual matrix of the case, the present FIR was lodged by the prosecutrix herself wherein, she alleged that on 05.11.2020, the petitioner Dharampal enticed her and took her in one rented accommodation near Indane Gas Agency, Jhajjar. Thereafter, on 10.11.2020, he again took her in one flat in Sector-4, Rohtak and he did obscene acts with her with bad intention. Despite her resistance, he did not stop and threatened her to be killed. Out of fear, she kept mum. Thereafter, on 05.02.2021, Dharampal again took her to one rented home near Jhajjar and repeated the obscene acts. She warned the petitioner to disclose the same to her husband, however, he threatened her to be killed. Request was made to take the legal action against the culprit. On commencement of the investigation, petitioner was arrested on 22.02.2021. He approached the Court of

learned Additional Sessions Judge, Jhajjar for the grant of bail, who after hearing counsel for the parties, declined the same vide order dated 04.02.2022. Aggrieved by the same, the petitioner approached this court for grant of regular bail.

Learned counsel for the petitioner vehemently contended that the prosecution of the petitioner in the present case is nothing but an abuse of the process of the Court as no case under Section 376 IPC is made out. He submits that from the facts and circumstances, false implication of the petitioner in a deliberated manner is writ large. He submits that the prosecutrix is 30 years of age and a married woman and initially she has levelled the allegations pertaining to the offence of outraging the modesty. He submits that from the reading of the allegations in the FIR, it is clear that the alleged occurrence took place in November, 2020 whereas, the present FIR was lodged on 06.02.2021 i.e. after delay of about three months. He further submits that statement of the prosecutrix was recorded under Section 161 Cr.P.C. on 09.02.2021 wherein she alleged that the petitioner, who is the maternal uncle of the prosecutrix, enticed her and kept her in Jhajjar for 4-5 days. Section 376 IPC was added accordingly. On the same date, her statement under Section 164 Cr.P.C. was recorded wherein, she deposed on the same line as deposed in statement under Section 161 Cr.P.C. The investigating agency produced her before the doctors for her medical examination on 07.02.2021, however, she declined to undergo medical examination. Thereafter, she was again produced before the medical board for her medical examination on 22.02.2021 but she again refused to give consent for her medical examination. However, her clothes were recovered by the investigating agency and were sent for the forensic test. He submits that from the perusal of the FSL report, it is apparent that semen could not be detected on the clothes recovered from the accused-petitioner. Learned counsel has further submitted that the incarceration of the petitioner is being prolonged by the prosecutrix as is apparent from the fact that she had been given so far more than six opportunities to appear before the trial

Court for her examination. However, perusal of the zimni orders would show that she always remained absent on all the dates. He has placed on record the zimni orders dated 28.09.2021, 26.10.2021, 26.11.2021, 17.12.2021 and 12.01.2022. Perusal of the zimni orders would show that the victim was not only absent rather the trial Court resorted to issue non-bailable warrants to secure her presence. He submits that in the facts and circumstances, the prosecutrix and the petitioner are of the age of majority. At the most, the relationship between the petitioner and the prosecutrix could be consensual and in such a case, no offence under Section 376 IPC would be attracted. He has submitted that the petitioner is languishing in the jail since 23.02.2021 and hence, the petitioner deserves to be enlarged on bail.

Learned State counsel has opposed the submissions made by counsel for the petitioner. He has submitted that there are specific allegations of rape against the petitioner. He submits that as there was a gap between the date of occurrence and the lodging of the FIR, hence the prosecutrix did not give her consent for the medical test. He further submits that now the challan has been presented, charges are framed. However, the prosecutrix has been summoned now for 17.03.2022. Learned State counsel has fairly stated that the petitioner and the prosecutrix both are of the age of majority and despite number of opportunities on the earlier dates when the prosecutrix did not appear, the Court had to issue the non-bailable warrants for securing her presence. He submits that no case for regular bail of the petitioner is made out.

I have heard counsel for the parties and perused the record.

Petitioner is in custody since 23.02.2021. Apparently, both the petitioner and the prosecutrix are of the age of majority. The alleged occurrence is of November, 2021 whereas, the FIR is lodged after a gap of about 03 months. The prosecutrix herself declined to go for the medical examination. Besides this, from the perusal of the zimni orders produced by the counsel for the petitioner, it is apparent that the prosecutrix had shown scant regard to the Court and opted not

to remain present before the Court for her examination.

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. The veracity of the allegations would be assessed by the trial Court only on the conclusion of the trial after appreciating the overall evidence produced by the respective parties before it. However, at this stage, this Court is convinced 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.

15.03.2022
m. sharma

(RAJESH BHARDWAJ)
JUDGE

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