

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

CRM-M-10820-2022

Date of Decision: 12.5.2022

Dulal Choudhary

..... Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Dinesh Sharma, Advocate, for the petitioner.

Mr.Kirpal Singh, Assistant Advocate General, Haryana.

Rajesh Bhardwaj, J. (ORAL)

Prayer in the present petition is for the grant of regular bail to the petitioner in a case FIR No.128 dated 19.9.2020, registered under Sections. 376(2)(n), 506 IPC (Section 120-B IPC added lateron), at Women Police Station, District Yamuna Nagar, Haryana.

As per factual matrix of the case, the FIR in question was lodged by the prosecutrix/victim herself (name concealed). It was alleged that she was married with Bimal Barman in the year 2000 and out of that wedlock one son and one daughter were born. Panchayati Talak (divorce) between the prosecutrix and her husband took place and thereafter, she performed marriage with Chandan Gosh, who was working in a plywood factory. The petitioner Dulal Choudhary and her husband used to sit and drink together. In his presence, her husband used to beat her. The accused-petitioner used to intervene and used to save the prosecutrix. He allured her on the promise, if she leaves the company of her husband, he would marry her. On this promise of marriage the accused-petitioner molested her for 6-7 years. During this period, she became pregnant and the accused asked her for abortion. He gave her some medicine for aborting the foetus. She was

left by the accused in the year 2019 and accused went to his village. The prosecutrix kept on waiting for a long period as the accused had promised to marry her on his return from the village. However, one year elapsed, but the accused did not return. Lateron, she was told by the brother of the accused to forget the accused and was threatened to be killed. She lodged the present FIR with a prayer to take legal action against the accused-petitioner. On the commencement of the investigation, statement of the prosecutrix was recorded and challan was presented. On the presentation of the challan, the trial Court took the cognizance. The petitioner was arrested on 25.9.2021. He approached the learned Additional Sessions Judge, (Exclusive Court for heinous Crimes against Women), Yamuna Nagar at Jagdhari for grant of bail, who after hearing the parties, declined the same vide its order dated 11.2.2022. Aggrieved by the same, the petitioner has 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 the present case. He submits that the petitioner and the prosecutrix both are of the age of majority. He further submits that from the reading of the allegations in the FIR, it is apparent that the prosecutrix was not only a married woman, but a mother of two children as well. After taking divorce in Panchayat from her first marriage, she married with one Chandan Gosh and thereafter, she came in relation with the petitioner. He submits that the prosecutrix has been examined by the trial Court and she has admitted during her cross-examination that she lived with her second husband i.e. Chandan Gosh for two years. He submits that the relationship between the petitioner and the prosecutrix was for so many years and thus, it was totally consensual.

Everything was in the knowledge of the prosecutrix, however, in order to implicate the petitioner in a serious offence, the prosecutrix levelled false allegations against the petitioner of concealing his marital status. He submits that the conduct of the prosecutrix is sufficient enough to show that the petitioner has been clandestinely roped in the present case. He has submitted that even otherwise, the prosecutrix already stands examined and the petitioner, who is behind bars since 25.9.2021 is not at all in a position to tamper with the evidence of the prosecutrix as she already stood examined. He has relied upon the judgment of Hon'ble Supreme Court in Pramod Surybhan Pawar vs. The State of Maharashtra and another, (2019) 9 SCC 608. Hence, there was no misconception of fact on the part of the petitioner in seeking the consent of the prosecutrix. Thus, the offence under Section 376 IPC is not attracted in this case. He submits that the petitioner has an impeccable record as he has never been involved in any criminal case prior to the present case. He has submitted that the petitioner deserves to be enlarged on bail.

Learned State counsel has opposed the submissions made by learned counsel for the petitioner and submitted that there are specific allegations made by the prosecutrix against the petitioner. He has submitted that though the prosecutrix has been examined by the trial Court, however, she has supported the case of the prosecution. He has candidly acknowledged that the prosecutrix and the petitioner are of the age of majority. He submits that out of total 13 prosecution witnesses, 4 witnesses already stands examined including the prosecutrix. He further submits that the petitioner has no case for grant of bail.

Heard.

Evidently, the prosecutrix and the petitioner both are of the age of majority. The prosecutrix is a married woman and mother of two children. There is nothing on record to show that the petitioner has ever been involved in any criminal case prior to the present case. The veracity of the allegations would be assessed by the trial Court on the conclusion of the trial. Whether offence under Section 376 IPC is attracted or not, would be assessed on the conclusion of the trial. However, confining the prayer for grant of bail, this Court is of the opinion that in the overall facts and circumstances of the case, 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.

12.5.2022
sharmila

(RAJESH BHARDWAJ)
JUDGE

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