

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

1. CRM-M-10794-2022

Bhupender @ MotanPetitioner

versus

State of Haryana Respondent

2. CRM-M-17178-2022

SandeepPetitioner

versus

State of HaryanaRespondent

Date of decision : 20.12.2022

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

**Present :- Mr. Sudhir Rana, Advocate (in CRM-M-10794-2022)
Mr. H.S. Dhindsa, Advocate (in CRM-M-17178-2022_**
for the petitioners.

Mr. Kirpal Singh Thakur, AAG, Haryana.

RAJESH BHARDWAJ, J. (Oral)

This order shall dispose of two regular bail petitions filed by the petitioners arising out of the same FIR bearing No.294 dated 28.09.2021, under Sections 366, 376-D, 506, 328, 34 of IPC, registered at Police Station Bawal, District Rewari.

Adumbrated facts of the case are that the prosecutrix (name concealed) lodged the complaint with the police wherein it was alleged that petitioners namely, Bhupender @ Motan and Sandeep are her neighbours. On 26.08.2021 at about 04:30 PM when she was returning from her parental home, Delhi to Village Pranpura and was waiting at Banipur Chowk then both the accused i.e. Bhupender @ Motan and Sandeep came there in their white coloured Eco Car and they offered her

lift to the Village. As the prosecutrix knew them being neighbourer, she sat in the car. Thereafter, both of them gave her water to drink and she became unconscious. They forcibly made her to drink alcohol as well. On regaining consciousness, she found herself raped by both of them. They threatened that they have already made her videos as well. Thereafter, on 27.08.2021 at about 09:30 AM, they dropped her at her matrimonial home. Under the fear, she could not report the matter, however, thereafter, she approached the police with her husband and lodged the complaint to take legal action against the culprits. On the basis of the complaint, formal FIR was lodged and the investigation commenced. The investigating agencies produced the prosecutrix before the learned Magistrate for recording her statement under Section 164 Cr.P.C. on 29.09.2021. Both the petitioners were arrested on 29.09.2021. Both the petitioners approached the Court of learned Additional Sessions Judge, Rewari praying for grant of regular bail. However, after hearing counsel for the parties, learned Additional Sessions Judge declined the bail filed by petitioner-accused Bhupender @ Motan vide order dated 3rd March, 2022 and petitioner-accused Sandeep vide order dated 8th March, 2022. Aggrieved by the same, petitioners are before this Court by way of filing the present petitions.

It has been vehemently contended by counsel for the petitioners that the petitioners have been falsely implicated in these cases. It has been submitted that the petitioners and the prosecutrix are the next door neighbourer and accused as well as the prosecutrix are of the age of majority. It is submitted that the alleged occurrence has taken place on 26th August, 2021 whereas, the FIR has been lodged on 28.09.2021 i.e. after about a month which is totally unexplained and unreasonable delay in

lodging the FIR. He submits that the prosecutrix who is not only married but mother of two children have roped in both the petitioners with due deliberations on the basis of false and frivolous allegations. It is submitted that the case of the prosecution is not even medically corroborated. They further deposed before this Court that in the facts and circumstances of the case, even if the allegations made in the FIR levelled by the prosecutrix are taken to be true though they are false then at the most it was a consensual relationship and thus, the offence under Section 376 IPC would not be attracted by any stretch of imagination. It is submitted that the petitioners have no criminal antecedents as they have not been involved in any other criminal case. The counsels argued that even otherwise the prosecutrix already stands examined and hence, the petitioners are not even in a position to make any undue influence on the prosecutrix. They further submit that the petitioners are behind bars from last more than one year and thus, in the facts and circumstances of the case, they deserve to be granted bail.

Learned State counsel has opposed the submissions made by counsel for the petitioners. It is submitted that though the prosecutrix is of the age of majority, however, there are specific allegations against both the petitioners. He submits that the prosecutrix has supported the case of the prosecution in her statement under Section 164 Cr.P.C. and even in her deposition made before the trial Court where she and her husband were examined as PW-1 and PW-2 and they have supported the case of the prosecution. He submits that out of 18 prosecution witnesses, 02 witnesses already stand examined i.e. prosecutrix and her husband. He has submitted that as per the instructions, the petitioners have no criminal antecedents as they are not involved in any other criminal case except the present case.

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

Evidently, both the petitioners and the prosecutrix are of the age of majority. They are the neighbourers of the prosecutrix. The occurrence in question has taken place on 26.08.2021, however the FIR was lodged after a month i.e. on 28.09.2021. Prosecutrix already stands examined. There is nothing on record to show that the petitioners have any criminal antecedents. The veracity of the allegations would be assessed by the trial Court on the appreciation of the evidence led by the respective parties. As the prosecutrix already stands examined, probability of the undue influence on the prosecutrix by the accused-petitioners do not survive any more.

The trial of the case will take sufficiently long time. This Court would refrain itself from commenting anything on the merits of the case. However, confining itself to the prayer made for bail, this Court finds that counsel for the petitioners succeed in making out a case for grant of regular bail. Accordingly, the present petitions are allowed and the petitioners are ordered to be released on bail on their 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.

Photocopy of this order be placed on the file of connected case.

20.12.2022
m. sharma

(RAJESH BHARDWAJ)
JUDGE

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