

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

(226)

CRM-M-16611-2022
Date of Decision: 01.08.2022

Narender Pal

--Petitioner

Versus

State of Haryana

--Respondent

CORAM:- HON'BLE MR. JUSTICE RAJESH BHARDWAJ.

Present:- Mr. Gopal Sharma, Advocate for the petitioner.

Mr. Neeraj Poswal, A.A.G., Haryana.

RAJESH BHARDWAJ.J (Oral)

The present petition has been filed under Section 439 Cr.P.C seeking the benefit of regular bail to the petitioner in case FIR No.128 dated 11.11.2021 under sections 376(2)(n), 450 and 506 I.P.C registered at Police Station, Women Police Station, District Rewari.

As per factual matrix, the FIR in question was lodged by prosecutrix herself (name concealed). It was alleged that accused Narender Pal i.e. the present petitioner made physical relations with the prosecutrix in the year 2004 on the pretext of marriage and thereafter she gave birth to a son namely Manish from their relationship. The son is now 17 years old. It was alleged that accused Narender Pal destroyed her married life and on 6.11.2021 he forcefully entered her house and without her consent sexually exploited her. FIR was lodged to take legal action against the culprit.

The investigation commenced and petitioner was arrested on 3.12.2021. Statement of the prosecutrix was recorded under Section 164 Cr.P.C. The petitioner approached learned Addl. Sessions Judge, Rewari

for grant of bail, however, after hearing the parties, the same was declined vide order dated 5.4.2022. Aggrieved by the same petitioner has approached this court for grant of bail.

Learned counsel for the petitioner vehemently contends that petitioner has been falsely implicated in the present case. He submits that the petitioner is a married person and father of grown up children. It is submitted that prosecutrix has performed multiple marriages and she is a habitual litigant and has lodged false FIRs against many innocent persons. It is submitted that both petitioner and prosecutrix are of the age of majority and at the most the allegations of physical relationship as made in the FIR are not true as the same were consensual. It is submitted that prosecutrix cannot be said to have been taken by the misconception of the fact and hence the offence under section 376 IPC would not be attracted in this case. Counsel submits that petitioner has no criminal antecedents. It is also submitted that prosecutrix has already been examined by the Trial Court and on some material points she has been declared hostile by the learned P.P. He submits that as the prosecutrix already stands examined by the Trial Court there cannot be any apprehension or threat of influencing the witnesses by the petitioner. He submits that in the overall facts and circumstances petitioner deserves to be enlarged on bail.

On the other hand, learned State counsel has submitted that prosecutrix has made specific allegations against the petitioner. He submits that blood samples of the prosecutrix and her son have been taken for DNA Test and the report of the same is still awaited. He, however, submits that prosecutrix already stands examined by the learned Trial Court and there is

nothing on record to show that petitioner has any criminal antecedents.

I have heard learned counsel for the parties at length and have gone through the records carefully.

Admittedly, petitioner is behind bars since 3.12.2021. Both petitioner and prosecutrix are of the age of majority. As per allegations made in the FIR they were in physical relationship since 2004. The statement of the prosecutrix was recorded under Section 164 Cr.P.C wherein she had deposed that both the petitioner and the prosecutrix had established physical relationship since the year 2003. The petitioner gave assurance to her that he would keep her with him and would also give name to her child, however, subsequently he did not honor the promise made by him. In the facts and circumstances of the case the consent of the petitioner is vitiated by the misconception of the fact or not would be debatable during the course of trial. This court would refrain itself from commenting on the merits of the case, as the allegations and counter allegations would be assessed only after evaluation of the complete evidence led by both the sides before the Trial Court. The trial would take sufficiently long time in its conclusion.

In the totality of facts and circumstances and without making any observation on merits, present petition is allowed. Petitioner be enlarged on bail on his furnishing bail/surety bonds subject to satisfaction

of Trial Court/Duty Magistrate, concerned. Nothing stated herein shall be treated as an expression on the merits of the case.

(RAJESH BHARDWAJ)
JUDGE

01.08.2022

lucky	Whether speaking/reasoned:	Yes/No
	Whether Reportable:	Yes/No