

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

CRM-M-19182-2021

Date of decision :24.02.2022

Rajbir Singh

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM : HON'BLE MR.JUSTICE RAJESH BHARDWAJ

Present: Mr. A.S. Gulati, Advocate
for the petitioner.

Ms. Sakshi Bakshi, AAG, Punjab.

Mr. S.L. Chandarsekhar, Advocate for the complainant.

RAJESH BHARDWAJ, J. (Oral)

The present petition is filed under Section 439 Cr.P.C. by petitioner-Rajbir Singh seeking grant of regular bail in case FIR No.119 dated 20.09.2020, registered under Sections 376, 506,201 of IPC at Police Station Valtoha, District Tarn Taran, Punjab.

The factual matrix of the case are that the present FIR was lodged by the prosecutrix named- Sandeep Kaur Nahar. The allegations in the FIR are that the prosecutrix is 27 years of age, who had done four years Diploma in Nursing. Accused-Rajbir Singh(petitioner), son of Mohan Singh was driver of the car of her father. It was alleged that he started blackmailing the prosecutrix on the threat that he would kill her father and brother. Being scared, she gave Rs.1,40,000/- to him. The petitioner also threatened her for performing marriage with him. Thereafter, time and again she was taken to different places by the accused including some hotels at Amritsar and rape was committed with

her. However, the accused did not mend his ways despite her resistance and he kept on blackmailing her and committed rape with her many times. On 06.08.2020 he asked her to come to Amritsar for performing marriage. Being scared, she sat in Swift Desire Car by taking Rs.2 lac from her house. They remained at Amritsar where the petitioner again committed rape with her in a hotel. As the petitioner did not stop blackmailing her she finally reported the matter to the police with a prayer to take legal action against the petitioner. Thus investigation commenced and the petitioner was arrested on 20.09.2020. He approached the learned Additional Sessions Judge, Tarn Taran for grant of bail. After hearing the parties, the same was declined by the learned Additional Sessions Judge vide order dated 15.01.2021.

Aggreived by this, the petitioner has approached this Court for grant of regular bail.

Learned counsel for the petitioner submits that the prosecution of the petitioner in the present case is totally false and an abuse of process of the Court. He submits that prosecutrix is of the age of majority and by no stretch of imagination it can be inferred that the allegations in the FIR are free from doubts. He further submits that admittedly the petitioner was employed as driver of her father and at the most, the relationship between the petitioner and the prosecutrix was consensual in nature. Once, the physical relationship between the petitioner and the prosecutrix was consensual and hence the offence under Section 376 IPC is not attracted.

He relies upon the judicial precedents by the Hon'ble Supreme Court in **Pramod Suryabhan Pawar vs. The State of**

Maharashtra, 2019 (9) SCC 608.

He argued that the consent of the prosecutrix was not vitiated by the misconception of fact. He submits that the petitioner was arrested on 20.09.2020 and now the prosecutrix has been duly examined. There cannot be any apprehensions attributed to the petitioner for tampering with the evidence.

Learned counsel for the complainant has vehemently opposed the submissions made by the learned counsel for the petitioner. He submits that there are specific allegations against the petitioner that the prosecutrix had been confined at different places and it is because of the threat given by the petitioner that she failed to disclose the conduct of the petitioner. He submits that the petitioner deserves no leniency and the bail be declined.

Learned counsel for the State has submitted that though the prosecutrix is of the age of majority, however, she has levelled the specific allegations against the petitioner. She further submits that in all there are 18 prosecution witnesses out of which both the prosecutrix and her father have been examined and have supported the case of the prosecution.

Heard.

There is no doubt that the petitioner and the prosecutrix both are of the age of majority. As is evident from the facts of the case, the alleged rape with the prosecutrix has been committed at hotels at Amritsar.

Admittedly, both of them had been staying at different places for number of days. In the facts and circumstances of the present

case, whether the offence under Section 376 IPC is made out or not, is totally debatable issue and would rest upon the outcome of the trial. This Court would refrain itself from commenting on the merits of the case.

In the totality of the facts and circumstances of the case when only two witnesses have been examined and hence the trial of the case will take sufficient time to conclude and thus no useful purpose will be served by keeping the accused in custody for such a long period. I find that learned counsel for the petitioner succeeds in making 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 on his furnishing bail/surety bonds to the satisfaction of the trial Court/Duty Magistrate, concerned. Nothing said herein shall be treated as an expression of opinion on the merits of the case.

(**RAJESH BHARDWAJ**)
JUDGE

24.02.2022

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