

VISHAL KUMAR

...PETITIONER

VERSUS

STATE OF PUNJAB

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE VIVEK PURI

Present: Mr. Ritesh Aggarwal, Advocate for the petitioner.

Mr. Harpreet Singh, Addl. AG, Punjab.

VIVEK PURI,J. (ORAL)

Custody certificate of the petitioner has been circulated today and the same is taken on record.

Vishal Kumar-petitioner is seeking regular bail in the case bearing FIR No.159 dated 03.06.2020 under Section 346 and Sections 366/376 IPC were added later on, registered at Police Station Tripuri, District Patiala.

Learned counsel for the petitioner contends that at the first instance, the FIR was registered under Section 346 IPC when the prosecutrix aged about 20 years went missing from the house on 30.05.2020. The FIR was lodged by the mother of the prosecutrix. The prosecutrix was produced before the police authorities by the mother of the petitioner on 06.06.2020. Her statement was recorded wherein she stated that the petitioner is friend of her brother. She was fed up of staying at home during the lockdown period. Accordingly of her own wish and without informing her parents, she came to Bathinda with the petitioner. They stayed in the house of his friend. The prosecutrix had been sleeping with the wife of the friend and the petitioner had been sleeping in another room. She has

specifically and categorically stated that the petitioner had not done any wrong and sexual act with her. However, on the following day i.e. 07.06.2020, her another statement was recorded wherein she took a different version and levelled allegation of commission of rape against the petitioner. The petitioner is in custody for a period of 02 years, 02 months and 14 days and is not involved in any other case. The statement of the prosecutrix and her mother have been recorded during the course of trial. Furthermore, it was a case of consensual relationship.

Learned State counsel has opposed the bail application on the score that in the statement of the prosecutrix recorded on 07.06.2020, there is a categoric and specific allegation of commission of rape against the petitioner. Moreover, the report of DNA analysis matches with the petitioner and during the course of trial, the prosecutrix has also supported the prosecution version.

It is significant to note that the prosecutrix has given two contradictory version during the course of investigation. In her earlier statement recorded during the course of investigation, the prosecutrix has stated that she voluntarily accompany the petitioner without any threat, pressure or allurement. Moreover, there is no act of commission of sexual intercourse attributed by her. However, in the subsequent statement, she has imputed the allegation of rape. Although, the report of DNA analysis is stated to be positive against the petitioner but the controversy as to whether it was a case of consensual relationship or not will be a debatable and moot point during the course of trial. The prosecutrix is stated to be aged about 24 years at the time of occurrence. Out of 19, only 05 witnesses are stated to have been examined so far. The statements of the prosecutrix and her mother have been recorded. As such, it cannot be said that the petitioner can be in a position to win over or influence the material witnesses in

purpose will be served by detaining the petitioner in further custody. As such, sufficient mitigating circumstances are made out to extend the concession of bail to the petitioner.

Without expressing any opinion on the merits of the case, the instant petition is allowed. The petitioner is ordered to be released on bail on his furnishing requisite bail bonds to the satisfaction of the learned trial Court/Duty Magistrate concerned.

The petition is allowed accordingly.

25.08.2022
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(VIVEK PURI)
JUDGE

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