

**106+221 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-19645-2022 (O&M)

Date of Decision: 28.7.2022

Naveen Kumar Mishra

..... Petitioner

Versus

State of Haryana and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Manoj Kuashik, Advocate, for the petitioner.

Mr. Neeraj Poswal, Assistant Advocate General, Haryana.

Rajesh Bhardwaj, J. (ORAL)

CRM-25829-2022

Allowed as prayed for. Annexure P-5 is taken on record.

Main case

Prayer in the present petition is for the grant of regular bail to the petitioner in a case FIR No.36 dated 18.2.2022, registered under Sections 376(2)(n), 506 IPC, at Women Police Station NIT Faridabad, District Faridabad.

As per factual matrix of the case, the present FIR was lodged by the victim herself (name concealed), wherein, she alleged that she and one Naveen Kumar Mishra both were employed in the office of Deputy Commissioner, Faridabad. They developed friendly relations and thereafter, Naveen Kumar Mishra proposed her to marry him. After the proposal on 22.8.2020, he took her to OYO room, Sector 41, Faridabad, where he committed rape against her wishes. He again took her to OYO room on 1.1.2022 and committed forcible rape upon her and without her consent he clicked her photos and videos in his phone. When she asked him to marry

her, he refused for the same. Aggrieved by the same the victim filed the complaint with the Police. The FIR was lodged to take legal action against the accused. After lodging the FIR, investigation commenced. Her statement under Section 164 Cr.P.C. was recorded, wherein she supported her allegations made in the FIR. The petitioner was arrested on 26.2.2022. The petitioner approached the learned Additional Sessions Judge (Fast Track Court), Faridabad for grant of bail, who after hearing the parties, declined the same vide its order dated 24.3.2022. Aggrieved by the same, the petitioner approached this Court by way of filing the present petition for grant of regular bail.

Learned counsel for the petitioner submits that the prosecutrix has maliciously lodged the FIR against the petitioner. He submits that both the petitioner and the prosecutrix are of the age of majority and from the bare reading of allegations at the most the relationship between both the petitioner and the prosecutrix was consensual and thus, no offence under Section 376 IPC is made out. He submits that the prosecutrix in order to blackmail the petitioner lodged the present FIR, whereas, the petitioner has never made any promise regarding marriage as alleged. He has relied upon Pramod Suryabhan Pawar vs. The State of Maharashtra and others, (2019) 9 SCC 608 in support of his contentions. To buttress his arguments, he has vehemently contended that now the prosecutrix has been examined by the trial Court as PW-1 and she has not supported the case of the prosecution. He has also placed on record the copy of the deposition, wherein she has been shown to be declared hostile. He submits that the prosecutrix, who is major, has not supported the case of the prosecution, which would show that

the petitioner was falsely implicated for the reasons best known to her. He submits that the petitioner has no criminal antecedents and hence, he deserves to be enlarged on bail.

On the other hand, learned State counsel has opposed the submissions made by learned counsel for the petitioner and submitted that there are specific allegations of rape levelled by the prosecutrix. He submits that at the time of recording statement of the prosecutrix under Section 164 Cr.P.C., she has supported the case of the prosecution. However, he candidly acknowledges that the prosecutrix is of the age of majority and she has not supported the case of the prosecution while appearing as PW-1 before the trial Court. He has submitted that in all there are 16 prosecution witnesses, out of which only the prosecutrix has been examined. He submits that as per the record, the petitioner has not involved in any other criminal case.

Heard.

Admittedly, both the petitioner and the prosecutrix both are of the age of majority. Whether the relationship was consensual and offence under Section 376 IPC in the facts and circumstances is attracted or not would be debatable issue to be decided by the trial Court on the basis of assessment of the evidence to be led by the parties. However, there is nothing on record to show that the petitioner has any criminal antecedents. The prosecutrix has not supported the case of the prosecution while appearing as prosecution witness. The trial of the case will take some time and no useful purpose would be served by keeping the petitioner in custody for such a long time. In the overall facts and circumstances of the case, I am

of the opinion that learned counsel for the petitioner has been able to make out a case for grant of regular bail to the petitioner. The trial is likely to take time in its conclusion. 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.

28.7.2022
sharmila

(RAJESH BHARDWAJ)
JUDGE

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