

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Sr. No. 221

CRM-M-21058-2022

Date of decision : 19.07.2022

Jaidev

..... Petitioner

VERSUS

State of Haryana

..... Respondent

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr.Rakesh Nehra, Senior Advocate, with
 Mr.Vipin Kuhar, Advocate, and
 Mr.Neeraj Sheoran, Advocate, for the petitioner.

Ms.Sheenu Sura, DAG, Haryana.

Mr.Vikas Gulia, Advocate, for the complainant.

DEEPAK SIBAL, J. (ORAL)

The present petition has been filed under Section 439 Cr.P.C. for the grant of regular bail in FIR No.246 dated 11.11.2021 registered under Sections 376, 328 and 506 IPC at Police Station Sector-27, Sonapat.

The FIR in which the petitioner seeks regular bail was registered on the complaint made by the prosecutrix in which she stated that she is a housewife; after household works she used to visit social media sites; while visiting certain social media sites she came in contact with the petitioner and befriended him; thereafter both of them were in constant touch with each other; on 10.11.2021 the petitioner invited her for celebration of his birthday at Sonapat which she initially refused; on repeated requests by the petitioner she agreed to visit Sonapat with him; on 10.11.2021 at about 2/2:30 p.m., on a telephone call made by the petitioner, the prosecutrix met him to be picked up in his car; thereafter they went to a hotel where the petitioner, made her consume a cold drink after which she felt unconscious; at about 11 p.m. she regained consciousness and found herself naked with the petitioner sitting besides her consuming liquor; she then realized that she had been raped by the petitioner; she put on her clothes and tried to run but the petitioner

caught hold of her and threatened to kill her and her family members in case she disclosed to anyone the factum of him having raped her; he also threatened her that he was having weapons and had contacts with several officials and criminals; at about 11:30 p.m. she checked out of the hotel and after boarding a bus returned home.

Learned senior counsel for the petitioner contends that the petitioner has been falsely implicated in this case; he is in custody since 21.12.2021; all the material witnesses including the prosecutrix already stand examined before the Trial Court and therefore the petitioner is in no position to influence the trial; the story of the prosecution that on 10.11.2021 from 4:30 p.m. till 11 p.m. the prosecutrix was unconscious on account of consumption of an intoxicant based cold drink given to her by the petitioner is palpably false in the light of the statement of the manager of the hotel where as per the prosecutrix herself both the petitioner and the prosecutrix had stayed; PW-1-Vikas Kumar, manager of the hotel, has specifically deposed that on 10.11.2021 the petitioner and the prosecutrix entered the hotel at 4:30 p.m. and that they both left the hotel together at 6:30 p.m. for having dinner as also that they returned after about 20 minutes and stayed in the hotel till 11:23 p.m.; PW-1-Vikas Kumar further goes on to state that at the time when the prosecutrix had left the hotel at 6:30 p.m. she had even spoken to him and that during her stay he had heard both the petitioner and the prosecutrix laughing and enjoying themselves; the afore deposition falsifies the entire case set up by the prosecution; as per the FSL report no semen has been found on the underwear of the prosecutrix; the falsity in the case of the prosecution is further brought out on account of refusal by the prosecutrix to get herself medically examined; the Trial Court in its order dated 04.06.2022 has recorded that the prosecutrix has refused to give answers to several queries posed to her by learned counsel for the petitioner showing her adamant nature and scant regard for the Court and that since 13 prosecution witnesses still remain to be

examined in the petitioner's trial, the same will take a long time to conclude.

Learned State counsel as also learned counsel for the complainant oppose grant of bail to the petitioner on the ground that the petitioner has committed a heinous crime and that if released on bail he may influence the trial.

The afore referred contradictions pointed out by learned senior counsel for the petitioner in the case set up by the prosecutrix vis-a-vis the statement made by PW-1-Vikas Kumar, manager of the hotel; the refusal by the prosecutrix to get herself medically examined; her conduct before the Trial Court as recorded in the interim order of the Trial Court dated 06.04.2022 and non-detection of semen on the prosecutrix's underwear make the prosecution's case debatable.

In the light of the above and because all the material witnesses including the prosecutrix have already been examined as also because 13 more prosecution witnesses still remain to be examined in the petitioner's trial, the present case is considered to be a fit one in which the petitioner be directed to be released on regular bail. Resultantly, subject to the satisfaction of the CJM/Duty Magistrate, Sonapat, he petitioner is directed to be released on bail.

It is clarified that the above observations have been made only for the limited purpose of deciding the present regular bail application and the same would not be construed to be an expression of opinion on the merits of the case.

19.07.2022
shamsher

Whether speaking/reasoned

Whether reportable

:

:

Yes / No

Yes / No

[DEEPAK SIBAL]
JUDGE