

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

(224)

CRM-M-21707-2022
Date of decision:- 24.05.2022

Mukesh Kumar

... Petitioner

Versus

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. S.K.Bishnoi, Advocate for the petitioner.

Ms. Deepshikha Chauhan, AAG, Haryana
for State-respondent.

...

SUVIR SEHGAL, J. (ORAL)

Instant petition has been filed under Section 439 of the Code of Criminal Procedure, 1973 seeking grant of post-arrest bail in case FIR No. 78 dated 29.10.2021, registered for offences under Sections 34, 376(2)(n) and 450 of the Indian Penal Code, 1860 (for short "IPC") and Section 3(2) (v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short "SC&ST Act"), at Police Station Women, District Fatehabad, Haryana, Annexure P-1.

Version of the prosecution is that FIR, Annexure P-1, has been registered on the statement of a 28 year old lady on the allegation that she was married in 2008, but her marriage ended in a divorce in 2022. She has a 11 year old child from the marriage. During her estrangement with her husband, she came in contact with Mukesh Kumar, present petitioner, who started meeting her and on 13.12.2020, he lured her into physical relationship on the pretext of marriage. Her sister, who is staying with her,

is aware of the entire incident. Allegation has been levelled that Mukesh Kumar has repeatedly sexually assaulted her. He even took her to his home and introduced her to his family members. However, subsequently he refused to get married to her because she belongs to a lower caste, whereas Mukesh Kumar belongs to Brahmin caste.

Counsel for the petitioner contends that although allegation of forced physical relations have been levelled against the petitioner, but the relationship was consensual. By referring to the testimony of the prosecutrix, who appeared in the witness box as PW-6, counsel submits that she has not supported the prosecution and has been declared to be hostile. Counsel asserts that the petitioner, who has a clean past and is in custody since 30.10.2021, deserves to be enlarged on bail.

Per contra, learned State counsel, upon instructions from L/SI, Geeta Devi, has opposed the petition and has submitted that the petitioner is accused of heinous offences. She has categorical instructions to state that the prosecutrix has supported the allegations in her statement recorded under Section 164 of the Code of Criminal Procedure, 1973.

Having considered the submissions made by counsel for the parties, this Court is prima facie of the view that the complicity of the petitioner in the crime would remain controvertible before the Trial Court and the petitioner, who is in custody for the last more than six months, would be entitled to be released on bail as seven out of twenty seven prosecution witnesses have been examined and the trial is likely to take time to conclude. Furthermore, the prosecutrix, who is the most material witness, has been examined.

Without adverting to the merits or demerits of the arguments addressed by counsel for the parties, petition is allowed. Petitioner is ordered to be released on bail during the pendency of trial on furnishing adequate bail/surety bonds to the satisfaction of the Area Magistrate/Duty Magistrate concerned.

It is clarified that nothing said hereinabove shall be construed to be an expression of opinion on the merits of the case.

(SUVIR SEHGAL)
JUDGE

24.05.2022
Kamal

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