

112+214 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-24599-2021 (O&M)

Date of decision : 14.03.2022

Ajay @ Sushil @ Sushal

.... Petitioner

Versus

State of Haryana

.... Respondent

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Ram Avtar Sheoran, Advocate
for the petitioner.

Mr. Vishal Kashyap, DAG, Haryana.

RAJESH BHARDWAJ, J. (ORAL)

CRM-9409-2022

Application is allowed as prayed for. Annexure P-4 is taken on record.

CRM-M-24599-2021

Prayer in the present petition is for grant of regular bail to the petitioner in case FIR No.20 dated 12.01.2021, under Sections 328, 376(2) (n), 506 of the Indian Penal Code, 1860 and Section 67-A of Information Technology (Amendment) Act, 2008, registered at Police Station Shiva Ji Colony Rohtak, District Rohtak.

As per factual matrix of the case, the present FIR was lodged by the prosecutrix herself. The sum and substance of the allegations in the FIR are that the prosecutrix knew the petitioner before the marriage who used to come to her maternal home. It was alleged that thereafter, he started coming to her matrimonial home as well and started calling her on phone. At number of times, he visited the matrimonial home and took the prosecutrix

to Kurukshetra and Delhi as well. During their stay together, he administered her intoxicants and taking benefit of her dizziness, established physical relationship with her. He made some objectionable videos of the prosecutrix and started blackmailing her. She was taken to Delhi and there also under the threat of blackmailing, he established the physical relationship with the prosecutrix. After lodging of the FIR, investigation commenced and the petitioner was arrested on 24.01.2021. He approached the learned Court of Additional Sessions Judge, Rohtak for grant of bail, who after hearing counsel for the parties, declined the same vide order dated 31.05.2021. Aggrieved by the same, the petitioner has approached this Court for grant of regular bail.

It has been contended by counsel for the petitioner that petitioner and the prosecutrix, both are of the age of majority. They both are married separately. He submits that the relationship between the petitioner and the prosecutrix is admitted prior to the marriage of the prosecutrix. He has drawn the attention of this Court to the lodging of the FIR on the earlier occasion by the husband of the prosecutrix i.e. FIR No.166 dated 09.08.2020, under Section 366, 34 of IPC wherein, the prosecutrix had eloped with the petitioner and after her recovery, her statement under Section 164 Cr.P.C. was recorded. He submits that she deposed before the learned magistrate that she remained with the petitioner for four months. She did not want to live with the husband and wanted to marry petitioner-Ajay @ Sushil @ Sushal. It was also deposed that she and Ajay @ Sushil @ Sushal would solemnize the marriage with each other after giving the divorce to their respective spouses. He submits that both the petitioner and the prosecutrix are in live-in-relationship and thus, in view of the law

settled by the Hon'ble Supreme Court in Pramod Suryabhan Pawar Vs. The State of Maharashtra and others (2019) 9 SCC 608, the consent of the prosecutrix was never vitiated by the misconception of the fact and hence, the offence under Section 376 IPC is not attracted in this case. To buttress his arguments, he has further submitted that now the prosecutrix has been duly examined by the trial Court as PW-3. During her examination before the trial Court, she has not supported the case of the prosecution and hence, she was declared hostile on the request of learned Public Prosecutor. He has placed on record the testimony of the prosecutrix which would read that the petitioner never committed any rape with her. She deposed that the physical relationship between the prosecutrix and the petitioner was with their consent and there was no coercion from the accused. He submits that the petitioner is behind the bars since 21.01.2021. He further submits that in the facts and circumstances of the case, incarceration of the petitioner is totally unwarranted.

Learned State counsel, on instructions from ASI Ashok, has submitted that there are specific allegations of rape against the petitioner. He submits that the prosecutrix has supported the allegations in the FIR and in her statement under Section 164 Cr.P.C. as well. However, he candidly acknowledges that the prosecutrix is of the age of majority and she has been examined by the trial Court and has not supported the case of the prosecution. He further submits that out of 17 prosecution witnesses, 03 witnesses have been examined including all the material witnesses i.e. the prosecutrix.

I have heard learned counsel for the parties and perused the record.

Petitioner and the prosecutrix both are of the age of majority. Petitioner is behind the bars since 24.01.2021. From the facts and circumstances, it is apparent that the *prima facie* relationship between the petitioner and the prosecutrix was consensual. Before the trial Court, the prosecutrix has also not supported the case of the prosecution.

The trial of the case will take sufficient time and no useful purpose will be served by keeping the petitioner in custody for such a long time. The veracity of the allegations would be established before the trial Court on the conclusion of the trial. However, at this stage, I find that learned counsel for the petitioner has succeeded in making out a case for grant of regular bail. 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 concerned trial Court/Duty Magistrate. Nothing said herein shall be treated as an expression of opinion on the merits of the case.

14.03.2022
m. sharma

(RAJESH BHARDWAJ)
JUDGE

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