

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

(Sr. No.209)

CRM-M No. 23001 of 2022

Date of decision : 30.05.2022

Hitesh Kumar

.....Petitioner

Versus

State of Haryana

.....Respondent

CORAM : HON'BLE MR. JUSTICE DEEPAK SIBAL

Present : Mr. Gaurav Chopra, Senior Advocate with
Mr. Anurag Chopra, Advocate and
Mr. Vardaan Seth, Advocate for the petitioner.

Mr. Sumit Jain, Addl. A. G., Haryana.

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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.254 dated 08.10.2021 registered under Sections 376(2)(n) and 506 IPC (Section 201 IPC added later on) at Police Station DLF Phase-III, district Gurugram.

The petitioner is being prosecuted for having raped the prosecutrix after giving her a false hope of marriage and then later for blackmailing her.

Learned senior counsel for the petitioner submits that the petitioner is a 23 year old man with no criminal antecedents; the petitioner has been falsely implicated in this case at the behest of the complainant when their consensual relationship turned sour; the investigation in the case is complete and therefore, the petitioner is in no position to influence the same; the petitioner is in custody since 06.01.2022; there is an unexplained

delay of over 05 months in the lodging of the FIR; in the medico legal report of the complainant there is no injury reflected on her person showing falsity in the prosecution case; the petitioner is sought to be prosecuted under Section 376(2)(n) IPC which Section is not attracted to the facts of the present case as even if the case of the prosecution is accepted, though vehemently denied, it is only one episode of rape which is alleged to have been committed by the petitioner; there is no forensic report to connect the petitioner with the alleged crime; the petitioner and the complainant were both adults in a consensual relationship and therefore, when the same ended on a sour note, the petitioner cannot be blamed for having raped the prosecutrix; there is no evidence that the petitioner ever blackmailed the complainant and that since in the petitioner's trial 14 prosecution witnesses still remain to be examined, the same will take a long time to conclude.

Learned State counsel opposes the grant of bail to the petitioner on the ground that the petitioner raped the prosecutrix after giving her a false hope of marriage and then later blackmailed her.

The petitioner and the complainant were two adults who entered into a relationship and had physical relations. Whether such physical relations between them were consensual or on the pretext of a false promise of marriage by the petitioner, shall be debated during the course of the petitioner's trial. In the afore facts the applicability of Section 376(2)(n) IPC and the delay in lodging of the FIR shall also be a subject matter of debate. Nonetheless, the petitioner is a 23 year old man; he has no other criminal antecedents; he is in custody since 06.01.2022; the prosecutrix's MLR does not reflect any injury on her person; the report under Section 173

Cr.P.C. has already been filed and therefore, the petitioner is in no position to influence the same and that since 14 prosecution witnesses remain to be examined, the petitioner's trial is likely to take a long time to conclude.

In view of the above, 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, Gurugram the 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.

30.05.2022*sunil yadav***(DEEPAK SIBAL)
JUDGE**

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No