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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-22862-2022

Date of Decision: September 08, 2022

Sanjay Sharma

.....Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR.JUSTICE RAJESH BHARDWAJ

Present: Mr.Aditya |Sanghi, Advocate
for the petitioner.

Mr.B.S.Virk, DAG, Haryana.

Mr.R.S.Chaudhary, Advocate
for the complainant.

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RAJESH BHARDWAJ, J.(ORAL)

This is the second petition filed under Section 439 Cr.P.C. praying for grant of regular bail to the petitioner in case FIR No.145, dated 31.12.2020, under Sections 376/494/506/509/376(2)(n) IPC, registered at Police Station Women West Gurugram, District Gurugram, Haryana.

As per the facts of the case, the FIR was lodged by the prosecutrix on the basis of various allegations. Sum and substance of the allegations made in the FIR is that both, i.e. prosecutrix and the petitioner , were in consensual relationship for a considerable long time. The petitioner told the prosecutrix that he was already married, however, there was a matrimonial discord between him and his wife. He assured the prosecutrix that as divorce proceedings were going on between him and his wife, hence

he would marry her after taking divorce from his wife. On assurance of the

marriage given to the prosecutrix, he established physical relationship with her. The relationship went on for a considerable long time and finally the petitioner married the prosecutrix in Arya Samaj Mandir, Goregaon, Mumbai on 02.05.2015. Out of this marriage, a son was also born. However, after the marriage, the prosecutrix came to know that petitioner was not legally divorced by his first wife, as assured to her. On account of the same, the rift arose between the petitioner and the prosecutrix, which finally led to registration of the present FIR against the petitioner. On registration of the FIR, the investigation commenced and the petitioner was arrested by the Investigating Agency on 08.06.2021.

Aggrieved by the same, the petitioner approached the learned Additional Sessions Judge (Fast Tract Court), Gurugram, praying for grant of bail, however, after hearing both the parties, the same was declined by it vide its order dated 06.09.2021. Aggrieved by the same, petitioner is before this Court by way of present petition.

Counsel for the petitioner has vehemently contended that petitioner has been falsely roped in, in the present FIR. He has submitted that admittedly both the petitioner and the prosecutrix are of the age of majority and are very well educated members of the society. He has submitted that factum regarding earlier marriage of the petitioner was very much in the knowledge of the prosecutrix and she established relationship with the petitioner with open mind. He has submitted that to show his bona fide fulfilling the promise of marriage with the prosecutrix, the petitioner duly married her and thereafter they were blessed with a child as well. He submits that as on date, the relationship between the petitioner and the prosecutrix is of husband and wife and they are parents of a child as well.

He has submitted that matrimonial discord between the petitioner and the prosecutrix is not on account of the allegations as levelled, however, they are purely of a matrimonial in nature. He has further submitted that in view of the peculiar facts and circumstances when the petitioner and the prosecutrix both are duly married, it is not misconception of fact and hence offence under Section 376 is not attracted. He has relied upon **Maheshwar Tigga vs State of Jharkhand** Law Finder Doc Id # 1744698 and has submitted that the case is squarely covered by the law laid down by the Hon'ble Apex Court. He further submits that petitioner is behind bars since 08.06.2021 and on earlier occasion, the prosecutrix was intentionally avoiding her appearance before the trial Court to prolong the incarceration of the petitioner. He submits that after the order passed by this Court, the prosecutrix had appeared before the trial Court and after her examination-in-chief, now she has filed two applications under Sections 311 Cr.P.C. and 319 Cr.P.C. He has submitted that purpose of filing of both these application is only to prolong the trial so as to keep the petitioner behind bars for a maximum period. He has submitted that the petitioner has no criminal antecedents and he is otherwise also not in a position to influence the prosecution witnesses and hence, he deserves to be granted the concession of bail.

On the other hand learned counsel for the complainant opposes the submissions made by learned counsel for the petitioner. He has submitted that the petitioner has cheated the prosecutrix. He has committed forgery in showing the forged divorce papers to win the confidence of the prosecutrix. He has submitted that though the petitioner and the prosecutrix are married and are parents of one child, however, consent of the prosecutrix

was taken by him by keeping her in dark and thus it is “misconception of fact” and hence he does not deserve the concession of bail.

Learned State counsel has submitted that after investigation, the challan was duly presented and charges were framed for offence under Sections 376(2)(n)/494/506 IPC. He has submitted that the prosecutrix has appeared before the trial Court and her statement has also been recorded. However, now two applications are filed under Sections 311 Cr.P.C. and 319 Cr.P.C. and the case is fixed for further proceedings on 13.09.2022. He has further submitted that out of 30 prosecution witnesses, 06 have been examined as on date. He has submitted that as per instructions, the petitioner has no criminal antecedents as he is not being prosecuted in any other case except the present case.

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

Admittedly, both the petitioner and the prosecutrix are of the age of majority and are very well placed members of the society. As per facts of the case, both were in consensual relationship and subsequently both of them married and blessed with a child as well. Allegations of the prosecutrix that her consent was taken by the petitioner by misconception of facts as he concealed the factum of his divorce from his first wife, however, this is also an admitted fact that the petitioner after a long relationship duly married the prosecutrix. The veracity of the allegations and counter-allegations can be assessed only after thorough trial and on appreciation of the evidence to be led by both the parties before the trial Court. However, this Court would refrain itself from commenting anything on the merits of the case.

Keeping in view the custody and the overall facts of the case, this Court finds that the counsel for the petitioner succeeds in making out a case for grant of bail to the petitioner.

The trial would take some time for its conclusion and no purpose would be served by keeping the petitioner behind the bars for further period.

Petition is allowed.

Bail to the satisfaction of trial Court/Duty Magistrate concerned.

Nothing said hereinabove shall be construed to be an expression on the merits of the case.

September 08, 2022
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(RAJESH BHARDWAJ)
JUDGE

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| 1. Whether speaking/reasoned ? | Yes/No |
| 2. Whether reportable ? | Yes/No |