

**227 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-27402-2021

Date of decision : 15.02.2022

Mujammil

.... Petitioner

Versus

State of Haryana

.... Respondent

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Sarfraj Hussain, Advocate
for the petitioner.

Mr. Vishal Kashyap, DAG, Haryana.

Ms. Rosi, Advocate
for the complainant.

RAJESH BHARDWAJ, J. (ORAL)

Matter has been taken up through video conferencing via Webex facility in the light of the Pandemic Covid-19 situation and as per instructions.

Prayer in the present petition is for grant of regular bail to the petitioner in case FIR No.203 dated 07.09.2020, under Sections 376 and 506 of the Indian Penal Code, registered at Police Station Pinangwan, District Nuh.

As per the facts of this case, the present FIR was lodged by husband of the prosecutrix. It was alleged that he is resident of the Village Hinganpur and a truck driver by profession and used to go outside for earning his livelihood. Petitioner-Mujammil son of Khushi Mohd. sprayed water from roof of his house on his wife i.e. the prosecutrix (named

concealed) while she was going to the well for washing clothes. Though, she was under impression that he sprayed the water upon her by mistake but later on, she became restless and in the meantime, Mujammil reached there. It was alleged that due to black magic (jadu tona) Mujammil took her in his favour and committed rape with her many times against her consent. He gave her some medicine mixed with water. When the prosecutrix came back to the village Hinganpur, he again committed rape with her and took some objectionable videos of her. He extended threat that if she did not follow his instructions then he would viral her videos and defame her. Mujammil committed rape many times with the wife of the complainant by putting her under fear of circulation of these objectionable videos. On 30.08.2020, Mujammil again committed rape with his wife in the fields and their family became doubtful. On asking by the family members, she narrated them whole story. The matter was reported to the police with a request to take the legal action against the culprits. The investigation commenced and the petitioner was arrested on 07.05.2021. Thereafter, he approached learned Sessions Judge, Mewat for grant of bail, who after hearing counsel for the parties, declined the same vide order dated 02.07.2021. Aggrieved by the same, petitioner approached this Court by way of filing the present petition for grant of regular bail.

It has been contended by counsel for the petitioner that present FIR is nothing but a cock and bull story. He submits that both the petitioner and the prosecutrix are of the age of majority and from the allegations made in the FIR, the same are totally unbelievable. He submits that the petitioner is a truck driver and the allegations of black magic are the creation of weird

imagination of the complainant. He submits that even if the allegations are taken to be true on the fact of it, then also, both the petitioner and prosecutrix, being of the age of majority, at the most it would be a case of consensual nature and in the facts and circumstances, no offence under Section 376 IPC is at all attracted. He submits that false implication of the petitioner is evident from the very fact that the challan in this case had been duly filed, charges were framed and the trial Court has commenced with the examination of the witnesses. He has drawn the attention of this Court to the various zimni orders of the trial Court which would show that on 02.12.2021, learned trial Court issued bailable warrants in the sum of Rs.10,000/- with one surety in the like amount for summoning the PWs i.e. the victim and Sagoon. Thereafter, on 09.12.2021 again, bailable warrants of the victim and her husband were issued in the sum of Rs.10,000/- with one surety in the like amount. Thereafter, the order dated 04.01.2022 would show that no evidence of the prosecution was present. The case was further adjourned to 12.01.2022. Again no evidence of the prosecution was present and on 10.02.2022 again, no prosecution evidence was present. He has submitted that the conduct of the prosecutrix and the complainant would show that they are intentionally avoiding their presence before the trial Court only to prolong the incarceration of the petitioner. He submits that in the overall facts and circumstances, petitioner deserves to be enlarged on bail.

Learned counsel for the complainant has opposed the submissions made by counsel for the petitioner and has invited the attention of this court to a complaint dated 10.02.2022 filed before the SHO, Nuh

wherein it is alleged by the complainant that they are being threatened by the accused side for not giving the evidence before the Court. She submits that there are specific allegations of rape against the petitioner and due to the threat given by the accused side, she could not appear before the Court so far.

On the other hand, learned State counsel submits that there are specific allegations against the petitioner. He submits that out of 16 prosecution witnesses, 04 witnesses have been examined so far. He candidly acknowledges that despite number of opportunities, till date the complainant and prosecutrix did not turn up for recording of their statements. He has expressed his ignorance regarding the contentions raised by the complainant of threat being given to them by her accused side.

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

Petitioner is behind the bars since 07.05.2021. The prosecutrix and the petitioner both are of the age of majority. Out of 16 prosecution witnesses, 04 witnesses have been examined. Five zimni orders of the trial Court produced before this Court would show the absence of the victim as well as of the complainant from the Court. As a matter of prudence, the Court makes endeavour for the examination of the prosecutrix before the consideration of the bail of the accused but that cannot be a thumb rule. In the attending facts and circumstances, the argument of the counsel for petitioner cannot be ignored in a cavalier manner that the prosecutrix is intentionally delaying the trial. Evaluation of the allegation and counter-allegations is a subject matter of trial which is to be evaluated on the basis

of the evidence to be led before the trial Court. In the overall facts and circumstances of the case, it is apparent that 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. Keeping in view the abovesaid facts, this Court finds 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.

15.02.2022
m. sharma

(**RAJESH BHARDWAJ**)
JUDGE

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