

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

(Sr. No. 222)

CRM-M No.26957 of 2022

Date of decision : 08.09.2022

Manish Kumar

.....Petitioner

Versus

State of Haryana

.....Respondent

CORAM : HON'BLE MR. JUSTICE DEEPAK SIBAL

Present : Mr. Ajay Bhardwaj, Advocate for the petitioner.

Ms. Sheenu Sura, DAG, 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.430 dated 18.10.2021 registered under Section 376(2)(n) and 506 IPC at Police Station Palam Vihar, district Gurugram.

The petitioner is being prosecuted for having sexual relations with the prosecutrix on the pretext of marriage.

Learned counsel for the petitioner contends that the petitioner is a 40 year old married man with two children; he has no other criminal antecedents; the petitioner is in custody since 20.02.2022; the investigation in the case is complete and therefore the petitioner is in no position to influence the same; there is no medical evidence to back the allegations of rape; there is an unexplained delay of over one and a half years in the lodging of the FIR; the petitioner and the prosecutrix being adults were in a consensual relationship and therefore provisions of Section 376(2)(n) IPC

would not got attracted to the facts of the present case; the allegations that the petitioner had raped the prosecutrix after showing her papers with regard to him having divorced his first wife are also false as no such divorce papers have been recovered; the Trial Court has issuedailable warrants to procure the presence of the prosecutrix as she is evading to get her statement recorded and that in the light of the afore submissions further incarceration of the petitioner is not necessary.

Learned State counsel opposes the grant of bail to the petitioner on the ground that the petitioner has made sexual relations with the prosecutrix on the pretext of marriage.

The petitioner and the prosecutrix were both adults at the time when the petitioner is alleged to have made physical relations with her on the pretext of marriage. That being so, it would be debated during the course of petitioner's trial as to whether such relations were consensual or otherwise. The alleged delay in lodging of the FIR by the prosecutrix shall also be debated during the course of petitioner's trial. Nonetheless, the petitioner is in custody since 20.02.2022; investigation in the case is complete and that there is no medical evidence to back the allegations of rape.

Keeping in view the totality of the above facts, 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.

08.09.2022

sunil yadav

(DEEPAK SIBAL)
JUDGE

Whether speaking/reasoned : Yes / No
Whether reportable : Yes / No