

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Sr. No. 217

CRM-M-27529-2022

Date of decision : 03.08.2022

Prateek Rustogi

..... Petitioner

VERSUS

State of Haryana

..... Respondent

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr.Aditya Sanghi, Advocate, and
 Mr.Sumit Sharma, Advocate, for the petitioner.

Mr.Anmol Malik, DAG, Haryana.

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. 361 dated 05.11.2021 registered under Sections 376(2)(n), 506 and 509 IPC at Police Station Sector 9-A, Gurugram.

The prosecutrix filed a complaint with the police as per which in the year 2018, after she had got divorce from her earlier husband, she got in touch with the petitioner on a website-shaadi.com. Thereafter, in September of the year 2019, on the asking of the petitioner the prosecutrix met him in Delhi and thereafter they went to Haridwar. During such period the petitioner repeatedly raped the prosecutrix on the pretext of marriage. However, at a later stage he refused to marry her and even blocked her calls. The prosecutrix then came to know that the petitioner was in relation with several other girls. On the basis of the afore complaint the police registered the FIR in question.

Learned counsel for the petitioner contends that the petitioner has been embroiled in this case when consensual relations between the petitioner and the prosecutrix turned sour; the petitioner and the prosecutrix, who are both divorcees, were in a consensual relationship for a period of about two years and

therefore, Section 376(2)(n) IPC is not even attracted to the facts of the instant case; the petitioner is in custody since 30.11.2021; investigation in this case is complete; the prosecutrix has already been examined in the petitioner's trial; the prosecutrix even refused to undergo a medical examination; the prosecutrix also refused to give her samples to be sent for forensic examination and that in the light of the afore submissions the petitioner's further incarceration is not warranted.

In support of his submissions, learned counsel for the petitioner relied on the following judgments: -

- 1. Pramod Suryabhan Pawar vs State of Maharashtra and another (2019) 9 SCC 608.*
- 2. Maheshwar Tigga vs State of Jharkhand (2020) 10 SCC 108.*
- 3. Order dated 27.07.2022 passed by the Supreme Court in Criminal Appeal No(s).442-2022 Mandar Deepak Pawar vs The State of Maharashtra and another.*

Learned State counsel opposes grant of bail to the petitioner on the ground that he has repeatedly raped a lady on the pretext of marriage.

The petitioner and the prosecutrix, both adults, were known to each other for a period of about two years. Therefore, it would be debated during the course of the petitioner's trial as to whether sexual relations alleged to have developed between them were consensual or forced. Nonetheless, the petitioner is in custody since 30.11.2021; the prosecutrix stands already examined in the petitioner's trial; the prosecutrix even refused to undergo a medical examination and that as per the FSL report no sample of the prosecutrix was even sent by the prosecution for forensic examination.

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.

03.08.2022
shamsher

[DEEPAK SIBAL]
JUDGE

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