

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

(212)

CRM-M-30989-2021

Date of Decision: 14.02.2022

Ajit

--Petitioner

Versus

State of Haryana

--Respondent

CORAM:- HON'BLE MR. JUSTICE RAJESH BHARDWAJ.

Present:- Mr. Narender Kaajla, Advocate for the petitioner.

Mr. Vishal Kashyap, D.A.G., Haryana.

RAJESH BHARDWAJ.J (Oral)

The present petition has been filed under Section 439 Cr.P.C seeking the benefit of regular bail to the petitioner in case FIR No.250 dated 14.10.2020 under sections 323, 376(2)(n), 379A, 506 I.P.C, registered at Police Station, Jui Kalan, District Bhiwani.

As per factual matrix, the FIR in question was lodged by Goverdhan son of Sheochand who is father-in-law of the prosecutrix. It was alleged that his son Bijender got married with the prosecutrix (name concealed). On 13.10.2020 at about 1 PM the prosecutrix left without intimation and despite their best efforts could not be traced. The description of the prosecutrix was given and a prayer was made to trace her and take legal action.

The investigation commenced and the petitioner was arrested on 3.12.2020. He approached learned Addl. Sessions Judge, Bhiwani for grant of bail, however, after hearing the parties, the same was declined vide order dated 22.4.2021. Aggrieved by the same petitioner has approached this court for grant of bail.

Learned counsel for the petitioner vehemently contends that prosecution of the petitioner in the present case is nothing but an abuse of the process of law. It is submitted that facts and circumstances of the case would reveal that no case under Section 376 I.P.C is made out against the petitioner, who is languishing in jail since 3.12.2020. It is submitted that prosecutrix is a married lady of the age of majority and went missing on 13.10.2020. Thereafter, she returned of her own on 18.10.2020. Thereafter, she appeared before the police and her statement under Section 161 Cr.P.C was recorded on 18.10.2020. A reading of the same would reveal that her marriage took place about 17 years ago and on 13.10.2020 at about 1 PM she went to Kairu without informing anybody. Thereafter she came to Bhiwani by bus, then to Rohtak and then to Delhi by bus. At Delhi bus stand she took an auto for railway station, Delhi. Thereafter she went to Mathura by train and reached there on 15.10.2020. She stayed at Mathura railway station till evening. Thereafter, on 15.10.2020 she boarded a train from Mathura to go to Delhi and reached there. She also borrowed Rs.200/- from one unknown person at Delhi. Thereafter from Delhi she came to Rohtak by bus and then to Bhiwani. She had made a call to her husband from Rohtak by borrowing somebody's phone. She stated that nothing wrong happened to her and she had left the home with her own will.

Thereafter, the investigating agency produced the prosecutrix before the concerned Illaqa Magistrate where her first statement under Section 164 Cr.PC was recorded on 19.10.2020. She stated in her statement that she used to talk to someone and her husband used to object to that. The person with whom she used to talk used to pressurize her for talking to him

and due to the harassment she went away with her own will. That boy also threatened her that if she did not accompany him he would murder her husband. Her only wish was to keep away the boy from her husband and her home. That boy was named to be 'S.D'. Counsel submits that surprisingly the investigating agency produced her before the learned Illaqa Magistrate on 2.11.2020 again for recording her statement under Section 164 Cr.P.C. A perusal of this statement would reveal that the prosecutrix named the petitioner for the first time. The petitioner was alleged to have threatened the prosecutrix and put her forcefully in the vehicle. She was taken to Delhi, where they stayed in a room and wrong act was committed with her. She was also beaten up there. On the next date i.e. on 14.10.2020 despite her resistance the petitioner put off her mangalsutra and ear ring and sold the same. Thereafter, she was taken to Mumbai from Delhi and in the night they stayed at Mumbai railway station. On 16.10.2020 she was taken back from Mumbai to Delhi. Thereafter on 17.10.2020 a room was taken at Delhi and wrong act was committed with her. On the next day i.e. 18.10.2020 she was taken to Rohtak from Delhi. She talked to her family members at Rohtak and asked them to come Bhiwani. The petitioner accompanied the prosecutrix from Rohtak to Bhiwani in the same bus and while alighting from the bus he threatened her not to disclose anything about him.

Learned counsel for the petitioner submits that the facts and circumstances of the present case are self speaking that the prosecutrix is a consenting party. She has been allegedly moving with the petitioner from one place to another in public transports and also staying in public places and there was no resistance whatsoever put by her for the alleged offence

committed against her. It is submitted that petitioner was neither named in the initial version of the FIR nor in the statement recorded under Section 161 Cr.P.C. Counsel submits that even in the first statement recorded under Section 164 Cr.P.C the petitioner was not named and the only name which was mentioned was 'S.D', whereas the name of the petitioner is Ajit. However, clandestinely the second statement under Section 164 Cr.P.C was recorded on 2.11.2020, wherein for the first time name of the petitioner surfaced. Counsel submits that by no stretch of imagination the complicity of the petitioner for the offence of rape is made out and he is languishing in the jail since 3.12.2020. It is submitted that despiteailable warrants issued by the Trial Court the prosecutrix is not coming forward for her deposition only in order to prolong the incarceration of the petitioner. Counsel submits that in view of the overall facts and circumstances of the case petitioner deserves to be enlarged on bail.

On the other hand, learned State counsel has vehemently opposed the contentions raised by counsel for petitioner. He submits that in the statement recorded under Section 164 Cr.P.C petitioner has been specifically named for having established physical relationship without the consent of the prosecutrix. It is further submitted that out of 18 prosecution witnesses 11 have been examined so far. Learned State counsel candidly acknowledges the fact thatailable warrants were issued against the prosecutrix, who has not appeared so far and the next date for examination of the prosecution witnesses is 15.3.2022.

I have heard learned counsel for the parties at length and have gone through the records carefully.

Admittedly, petitioner is behind bars since 3.12.2020. The petitioner as well as the prosecutrix are of the age of majority. Facts of the case reveal that prosecutrix traveled from one place to another by public transports. Whether a case under Section 376 I.P.C is made out against the petitioner or not would be evaluated only upon conclusion of the trial. The veracity of allegations and counter allegations would be assessed by the Trial Court on completion of trial. The trial would take sufficiently long time in its conclusion.

In the totality of facts and circumstances and without making any observation on merits, present petition is allowed. Petitioner be enlarged on bail on his furnishing bail/surety bonds subject to satisfaction of Trial Court/Duty Magistrate, concerned. Nothing stated herein shall be treated as an expression on the merits of the case.

(RAJESH BHARDWAJ)
JUDGE

14.02.2022

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