

**232 IN THE HIGH COURT OF PUNJAB AND HARYANA
CHANDIGARH**

CRM-M-28829-2022 (O&M)

Date of Decision: 23.08.2022

ARUN GUPTA

...Petitioner

V/S

STATE OF HARYANA

...Respondent

CORAM: HON'BLE MR. JUSTICE VIVEK PURI

Present: Mr. Balbir Kumar Saini, Advocate
for the petitioner.

Mr. Zorawar Singh Chauhan, DAG Haryana.

VIVEK PURI J. (Oral)

The petitioner is seeking regular bail in the case bearing FIR No. 142 dated 08.05.2020, under Sections 323, 354, 376, 506 of IPC, registered at Police Station Chandimandir, District Panchkula (Annexure P-1).

Custody certificate filed and the same is taken on record.

Learned counsel for the petitioner contends that at the first instance the FIR was registered under Sections 354, 323 and 506 of the Indian Penal Code against the petitioner who is brother-in-law (Devar) of the prosecutrix. The petitioner was granted bail by the court of learned Judicial Magistrate Ist Class. On the basis of supplementary statement and the statement of the prosecutrix under Section 164 Cr.P.C., the offence under Section 376 was also added, as a result of afterthought. An application for cancellation of bail was moved and in terms of the order dated 30.05.2020, the bail of the petitioner was

cancelled by the Judicial Magistrate Ist Class, Panchkula.

It has further been contended that false allegations have been levelled against the petitioner on account of property dispute. The FIR is silent with regard to allegations of commission of forcible sexual intercourse and the same have been imputed as a result of afterthought. Furthermore, at the time of medical examination, which was conducted on the date, when the FIR was registered, the prosecutrix had given a history of sexual assault by the petitioner, which took place about two and half months ago. Out of 12, only 4 witnesses have been examined so far. Material witnesses, i.e. prosecutrix and her husband, i.e. the brother of the petitioner, have been examined, during the course of trial.

Learned State counsel has opposed the bail application on the score that there is categoric allegation of commission of forcible sexual intercourse imputed by the prosecutrix, against the petitioner in the supplementary statement, the statement under Section 164 Cr.P.C. and in the statement recorded during the course of trial.

It is significant to note that the petitioner is in custody for a period of 2 years and 24 days and the custody certificate indicates he is not involved in any other case. Out of 12 witnesses, only 4 have been examined so far. FIR is silent with regard to allegation of commission of forcible sexual intercourse. Initially, the FIR was registered under Sections 323, 354 and 506 IPC and the offence under Section 376 IPC has been added after the supplementary statement of the victim and the

statement under Section 164 Cr.P.C. has been recorded. The prosecutrix was medico legally examined on the same day, when the FIR was registered but she had given the history of sexual assault by the petitioner about two and half months ago. The prosecutrix and her husband have been examined. Consequently, it cannot be said that the petitioner will be in a position to win over or influence the witnesses. 8 witnesses are still to be examined. The conclusion of trial is likely to take some. The petitioner is in custody for a period of 2 years and 24 days and not involved in any other case. No useful purpose would be served by keeping the petitioner in further incarceration.

As such, sufficient mitigating circumstances are made out to extend the concession of bail to the petitioner. Therefore, without making any expression of opinion on the merits of the case, it is ordered that the petitioner be released on regular bail subject to his furnishing requisite bail bonds/surety bonds to the satisfaction of the concerned trial Court/Chief Judicial Magistrate/Duty Magistrate.

The petition is allowed.

23.08.2022
Ajay Goswami

(VIVEK PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No