

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

CRM-M-33328-2021

Date of Decision: 22.3.2022

Sachin

..... Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Ms. Sharmila Sharma, Advocate, for the petitioner.

Mr. Vishal Kashyap, Deputy Advocate General, Haryana.

Rajesh Bhardwaj, J. (ORAL)

Prayer in the present petition is for the grant of regular bail to the petitioner in a case FIR No.05 dated 8.2.2021, registered under Section 376(2)(n) IPC, at Police Station Women Rohtak, District Rohtak.

As per factual matrix of the case, the FIR in question was lodged by the prosecutrix/victim herself (name concealed), wherein, it was alleged that she got friendly with the petitioner, namely, Sachin and thereafter both of them were in a relationship and the petitioner promised her to marry. On the basis of promise, the prosecutrix and the petitioner became intimate to each other. The petitioner used to come to meet her from Panipat to Rohtak. On 6.6.2020, in a well planned manner, he took her in a building having many rooms, where on the promise of marriage, he raped her twice. They continued meeting each other and thereafter, the petitioner kept on making physical relations with the prosecutrix on the basis of promise of marriage only. However, on December 25, the petitioner gave her a phone call and said that she should forget him and he would never marry her. Having found cheated, the prosecutrix lodged the present FIR

with a request to take legal action against the petitioner. On the commencement of the investigation, the petitioner was arrested on 2.3.2021. Statement of the prosecutrix was recorded under Section 164 Cr.P.C. before the learned JMIC, Rohtak on 9.2.2021. She reiterated the allegations of the FIR and deposed that Sachin committed rape with her and on her asking for marriage, he switched off his phone. The petitioner approached the learned Special Judge-cum-Additional Sessions Judge, Rohtak for grant of bail, who after hearing the parties, declined the same vide its order dated 13.7.2021. Aggrieved by the same, the petitioner approached this Court by way of filing the present petition for grant of regular bail.

Learned counsel for the petitioner vehemently contends that both the prosecutrix and the petitioner are of the age of majority and the relationship between both of them has been duly admitted by the prosecutrix herself. The only grouse of the prosecutrix in the allegations made in the FIR is that after having made physical relationship the petitioner refused to marry her. She relies upon the law laid down by Hon'ble Supreme Court in the case of Parmod Suryabhan Pawar vs. The State of Maharashtra and others, (2019) 9 SCC 608, wherein in the similar circumstances, the Hon'ble Supreme Court has held that when the relationship is consensual on account of promise to marry, the consent is not vitiated by the misconception of fact and hence, the same does not amount to offence of rape. She submits that from the facts and circumstances of the case, there was no coercion from the side of the petitioner and the intimate relationship between both was consensual and thus, no offence under Section 376 IPC is attracted. She further argued that innocence of the petitioner further strengthened from the very fact that now the prosecutrix has been examined by the trial Court as

PW-2. On her appearance before the trial Court she has not supported the case of the prosecution and thus, on request of learned Public Prosecutor, she was declared hostile. She has drawn the attention of this Court to the deposition of the prosecutrix, wherein she has deposed that she came in contact with the petitioner through Facebook and they became friend and started meeting each other. She further deposed that the petitioner used to take her to park and restaurant and neither he promised her to marry nor he committed any wrong act with her. Learned counsel for the petitioner submits that in view of the overwhelming facts and circumstances of this case, further incarceration of the petitioner is totally unwarranted and he deserves to be enlarged on bail.

Learned State counsel has opposed the submissions made by learned counsel for the petitioner and submitted that there are specific allegations of rape against the petitioner. He further submits that in the statement of the prosecutrix recorded under Section 164 Cr.P.C. as well she supported the case of the prosecution. However, he candidly acknowledges that during her examination before the trial Court she has not supported the case of the prosecution and has been declared hostile. He submits that out of total 12 prosecution witnesses, 2 witnesses including the prosecutrix have been examined.

Heard.

Admittedly, both the prosecutrix and the petitioner are of the age of majority. The relationship between both of them has been duly admitted and the prosecutrix has not even supported the case of the prosecution during her examination before the trial Court. Whether in the facts and circumstances the offence under Section 376 IPC is attracted or

not would be appreciated by the trial Court on the conclusion of the trial. However, in the peculiar facts and circumstances, I am of the opinion that learned counsel for the petitioner has been able to make out a case for grant of regular bail to the petitioner. Accordingly, the present petition is allowed and the petitioner is ordered to be released on bail 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.

22.3.2022
sharmila

(RAJESH BHARDWAJ)
JUDGE

Whether Speaking/Reasoned	:	Yes/No
Whether Reportable	:	Yes/No