

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

(220)

CRM-M-33904-2021

Date of Decision: 07.02.2022

Hardeep

--Petitioner

Versus

State of Haryana

--Respondent

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

Present:- Mr. J.S. Bhatia, Advocate for the petitioner.

Mr. Ashok Kumar Sehrawat, D.A.G., Haryana.

RAJESH BHARDWAJ.J (Oral)

Matter has been taken up through video conferencing via Webex facility in the light of the Pandemic Covid-19 situation and as per instructions.

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.214 dated 21.3.2021 under sections 341, 354, 354-D, 506 I.P.C (Section 376 (2)(n) I.P.C was added later on, registered at Police Station, Sadar, Gurugram.

Learned counsel for the petitioner vehemently contends that the FIR in question was lodged by the prosecutrix, who is 29 years of age and mother of one child. Counsel submits that as per the allegations in the FIR it was alleged that the prosecutrix is doing a job at N.C.R Metro, Sohna Road and she came in contact with the petitioner during training at Faridabad. They used to talk to each other and the petitioner used to take money from her. She used to give money to the petitioner time and again. She gave even Rs.50,000/- to him. On asking to return back the money, petitioner started threatening and abusing her. He started calling her family

from different mobile numbers and threatened to viral her photo and video if she disclosed anything to anyone. Thereafter, he sent an objectionable photo to her brother's mobile and threatened her to take back the case. He also threatened to make the photo of the prosecutrix viral to the people in her office as well. A request was made to take legal action against the culprit. Counsel submits that thereafter statement of the prosecutrix under Section 164 Cr.P.C was also recorded and a perusal of the same would show that the prosecutrix made material improvements in the same. Counsel has drawn attention of this Court to the statement wherein prosecutrix has admitted her relationship with the petitioner and submitted that she was not aware whether petitioner is already married and she came to know about it after about 6 months of the same. It is also alleged that on 4.2.2021 the petitioner forcibly had sex with the prosecutrix. Besides other allegations made in the FIR it was also deposed that the petitioner used to do everything with her by saying that he would take divorce from his wife.

Petitioner was arrested on 9.6.2021. He approached the court of learned Addl. Sessions Judge, Gurugram for the grant of bail. However, the same was declined after hearing parties vide order dated 26.7.2021. Aggrieved by the same, petitioner has approached this Court for grant of bail.

Learned counsel for the petitioner submits that from the perusal of the allegations in the FIR and that in the statement recorded under Section 164 Cr.P.C it is apparent that the prosecutrix is of the age of majority and she was aware of the marital status of the petitioner. It is further submitted that the allegations of rape with the prosecutrix allegedly on 4.2.2021 happened before the registration of the FIR, however, the same

was never alleged in the FIR in question which was registered on 21.3.2021 but the same has been deliberately alleged in the statement recorded under Section 164 Cr.P.C on 22.3.2021. Counsel further submits that the prosecutrix has been examined by the Trial Court, though, she has supported the case of prosecution but again the same is full of contradictions. Counsel submits that even otherwise the material witness already stands examined and hence there cannot be any type of apprehension of pressure or coercion from the petitioner to the prosecutrix. Counsel further submits that petitioner has never been involved in any other case and he has an impeccable record. Even otherwise, no offence under Section 376 I.P.C, as alleged, is made out against the petitioner and hence he deserves to be enlarged on bail.

On the other hand, learned State counsel has opposed the contentions made by learned counsel for the petitioner. He submits that there are categorical allegations of rape by the petitioner. It is further submitted that the prosecutrix has supported the case of prosecution as she has been examined before the Trial Court. It is also submitted that the contradictions as alleged are not material and hence the prayer made by the petitioner may be declined.

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

Petitioner is behind bars since 9.6.2021. Petitioner and the prosecutrix are of the age of majority. A perusal of the FIR as well as statement of the prosecutrix recorded under Section 164 Cr.P.C would show that the prosecutrix and petitioner were in relationship. The prosecutrix already stands examined before the Trial Court. The veracity of the

allegations levelled would be evaluated by the Trial Court on the basis of evidence led by both the parties. Out of the total 10 prosecution witnesses 2 including the prosecutrix have been examined. 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

07.02.2022

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