

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

(226)

CRM-M-31554-2022
Date of Decision: 27.07.2022

Barkat

--Petitioner

Versus

State of Haryana

--Respondent

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

Present:- Mr. G.S. Bedi, Advocate for the petitioner.

Mr. Neeraj Poswal, A.A.G., 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.14 dated 22.1.2021, registered under Sections 376- D, 377, 506, 34 IPC and Section 67-A of the Information Technology Act, at Police Station Nagina, District Nuh.

As per the factual matrix of the case, the present FIR was lodged by the prosecutrix herself. The sum and substance of the allegations in the FIR is that she was married with Mohd. Hanif in the year 2007 and her husband has 4-5 heavy vehicle truck. On 3.11.2020, she went to meet her parents to her parental village Nijamabad Telgana. Fateh Mohammad and Barkat were driving their vehicle truck. On 29.11.2020 at about 10 O'clock in the night, her husband asked her to sit in vehicle No.RJ 14 G 0890 to come back from Nijamabad bye-bass to village Gumat Bihari. On 1.12.2020 at about 8/8:30 pm, Fateh Mohammad and Barkat committed rape turn wise with the prosecutrix without her consent on the threat of knife. Accused Barkat committed unnatural sex with her and they also made a video of the prosecutrix. Thereafter, the accused dropped her at about 9

O'clock in the night at Badakli Chowk. On 25.12.2020, when her husband came home, she narrated the happening with her. Talks of compromise were going on at Panchayat level but the same failed and hence, the FIR in question was registered by the prosecutrix. After registration of the FIR, the investigation commenced and the petitioner was arrested on 22.1.2021. The statement of the prosecutrix was recorded under Section 164 Cr.P.C. and medical was conducted and thereafter, challan was submitted. The petitioner approached the learned Additional Sessions Judge, Fast Track Special Court for trial of Rape Cases, Mewat at Nuh praying for the grant of bail, who after hearing the parties, declined the same vide its order dated 26.5.2022. Aggrieved by the same, the petitioner has approached this Court by way of filing the present petition for grant of bail.

Learned counsel for the petitioner has vehemently contended that both the petitioner and the prosecutrix are of the age of majority. He submits that as per the allegations in the FIR itself, the petitioner was employed on the truck of the prosecutrix family. He has submitted that the alleged occurrence had taken place on 1.12.2020, whereas, the present FIR was lodged on 22.1.2021 i.e. virtually after about a delay of two months . He submits that in the FIR itself, the prosecutrix has herself mentioned that efforts for negotiation were going on. He submits that in the facts and circumstances at the most the relationship between the petitioner and the prosecutrix was consensual and there could not have been the relationship as alleged by coercion or threat to the life as alleged. He submits that the delay of about two months in reporting the matter is itself fatal for the prosecution. He further submits that the learned Fast Track Court has

declined the bail to the petitioner on the ground that granting bail to him may hamper the on going trial. However, as on date, the prosecutrix though has supported the case of the prosecution but already stands examined. Counsel submits that co-accused Fateh Mohammad, who has been assigned the same role has already been granted bail by this court vide order dated 5.5.2022 passed in CRM-M-32122-2021. He further submits that the petitioner has no criminal antecedent as he has never been earlier involved in any criminal case. The material witnesses already stand examined and hence, there cannot be any apprehension projected by the prosecution of tampering with evidence as material witnesses already stand examined. He submits that in view of the facts and circumstances, the petitioner deserves to be enlarged on bail.

Learned State counsel has opposed the submissions made by learned counsel for the petitioner and submitted that though the prosecutrix is of the age of majority and a married woman, however, she has supported the case of the prosecution while giving her statement under Section 164 Cr.P.C. and even while being examined by the trial Court. He has further submitted that all the material witnesses including the prosecutrix have already been examined. He submits that no ground for bail to the petitioner is made out. He, however, admits that co-accused Fateh Mohammad, who is similarly situated, has already been granted bail by this court.

Heard.

Admittedly, the prosecutrix and the petitioner are of the age of majority. The FIR has been lodged after about a delay of almost two months. There is nothing on record showing that the petitioner has any

criminal antecedents. The trial Court has already examined the material witnesses. The co-accused Fateh Mohammad, who has been assigned the same role has already been granted bail by this court vide order dated 5.5.2022 passed in CRM-M-32122-2021. The allegations and counter allegations whether offence under Section 376 IPC is attracted in the facts and circumstances or not totally lies within the domain of the trial Court to be evaluated after appreciation of the evidence led before it. However, keeping in view the overall 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.

(RAJESH BHARDWAJ)
JUDGE

27.07.2022

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