

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

(224)

CRM-M-37968-2021(O&M)

Date of Decision: 25.04.2022

Mukesh

--Petitioner

Versus

State of Haryana

--Respondent

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

Present:- Mr. Tanvir S. Grewal, Advocate for the petitioner.

Mr. Neeraj Poswal, A.A.G., Haryana.

RAJESH BHARDWAJ.J (Oral)

The present petition has been filed under Section 439 Cr.P.C for grant of regular bail to the petitioner in FIR No.71 dated 19.3.2021 registered under Sections 323, 342, 354-D, 376, 452, 506, 511 IPC at Police Station, Sadar Mahendergarh, District Mahendergarh.

As per facts of the case, present FIR was lodged by the prosecutrix (name concealed). The sum and substance of the allegations in the FIR is that the prosecutrix was residing in Central University of Haryana. On 18.3.2021 Mukesh, who was working as Pharmacist in the university was troubling her for the last 2/3 years. He used to blackmail her by saying that he had her photos and recordings and if she would not act as per his saying then he would send those recordings to her family. In the evening at about 7 O' clock when prosecutrix was resting in her room, Mukesh rang bell of her flat to open the door. When she opened the door Mukesh entered inside and bolted the door. Thereafter he started shouting at the prosecutrix and asked her why did she withdraw the case against university people. In the heated exchanges, Mukesh threw the prosecutrix on bed and started forcing himself upon her and also tried to make sexual relations with her. He also gave beatings to her. However, the prosecutrix

managed to dial number 100 to save herself. The present FIR was lodged to take legal action against the culprit.

The investigation commenced and the petitioner was arrested on 22.3.2021. He approached learned Addl. Sessions Judge, Narnaul for grant of bail, however, after hearing the parties, the same was declined vide order dated 16.8.2021. Aggrieved by the same petitioner has approached this court for grant of bail.

At this stage, learned State counsel has pointed out that during investigation the statement of prosecutrix under Section 164 Cr.P.C was recorded and thereafter offence under Section 511 IPC was deleted and section 376 IPC remained along with other sections and thus the petitioner is being tried for the offence of rape and not for the offence of attempt to rape.

Learned counsel for the petitioner has vehemently contended that the petitioner has been falsely and frivolously implicated in the present case. It is submitted that petitioner and prosecutrix were known to each other since long. Both are employees of Central University of Haryana, Mahendergarh. Counsel submits that the allegations in the FIR, on the face of it are false and frivolous and the same pertain to an offence of attempt to rape, however, it is after recording of the statement of the prosecutrix under Section 164 Cr.P.C, wherein after due deliberations the allegations of attempt to rape were converted to the allegations of rape. It is submitted that the petitioner has an impeccable record as he has never been involved in any such offence earlier. Counsel submits that both petitioner and the prosecutrix are of the age of majority. The prosecutrix has been examined by the Trial Court as PW-2. A copy of her deposition has been placed on

record, wherein she has not supported the case of the prosecution. A perusal of the same would also show that prosecutrix had matrimonial discord with her husband and the petitioner had been helping her out. She also deposed that the petitioner neither committed rape upon her nor made any efforts thereof. She further deposed that petitioner did not cause any eve teasing to her. Counsel submits that as the material witness has not supported the case of the prosecution, further incarceration of the petitioner is unwarranted

On the other hand learned State counsel on instructions from ASI Mukesh has strongly opposed the submissions made by counsel for petitioner and submits that there are specific allegations against the petitioner. He submits that after recording statement of the prosecutrix under Section 164 Cr.P.C the offence under Section 511 IPC was deleted as the same was converted into offence under Section 376 IPC. He, however, candidly acknowledges that prosecutrix has not supported the case of the prosecution. It is further submitted that out of the total 13 prosecution witnesses 7 have already been examined by the Trial Court including the prosecutrix.

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

Admittedly both petitioner and prosecutrix are colleagues and are of the age of majority. At the initial stage the petitioner was alleged to have committed an attempt to rape, however, during investigation the offence under Section 511 IPC was deleted and the offence was converted into Section 376 IPC. The prosecutrix has been examined by the Trial Court as PW-2 and she did not support the case of the prosecution and was thus declared hostile. There is nothing on record to show that petitioner had

been involved in offences of similar nature. Out of the total 13 prosecution witnesses 7 have already been examined by the Trial Court. The veracity of the allegations levelled in the FIR would be assessed only after conclusion of the trial. In the overall facts and circumstances of the case, this Court finds that counsel for petitioner succeeds in making out a case for grant of bail to the petitioner.

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

25.04.2022

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