

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

CRM-M-33735-2022
Date of Decision: 5.8.2022

Ajay Kumar @ Ajay

..... Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Rahul Sidher, Advocate, for the petitioner.

Mr. B.S. Virk, 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.12 dated 4.3.2022, registered under Sections 323, 376(2)(n) and 506 IPC, at Women Police Station Fatehabad, District Fatehabad.

As per factual matrix of the case, the FIR in question was lodged by victim herself (name concealed), wherein it was alleged that she had friendly relations with accused Ajay and he gave her promise to marry her. On the assurance of marriage given to her, he established physical relations with her. He took her in Hotel at Hisar from 28.2.2022 to 20.3.2022. However, after establishing physical relationship with her on the promise of marriage, he refused to marry her. It was alleged that fraud was committed by the petitioner and thus, he committed rape on her by giving false promise to marry her. The complaint was filed to register the FIR and to take legal action against the accused. On lodging the FIR, investigation commenced and the petitioner was arrested on 5.3.2022. Statement of the prosecutrix was recorded under Section 164 Cr.P.C. The petitioner approached the learned Addl. Sessions Judge-cum-Special Judge, Fast

Track Court, Fatehabad for grant of bail, who, after hearing the parties, declined the same vide order dated 28.7.2022. 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 contends that from the bare reading of the allegations made in the FIR, it is apparent that both the petitioner and the prosecutrix are of the age of the majority and they had consensual relationship. He submits that the FIR was lodged on the misunderstanding between both of them. He has submitted that during the pendency of the bail petition before the trial Court, the petitioner was granted interim bail by the Additional Sessions Judge-cum-Special Judge, Fast Track Court, Fatehabad on 2.7.2022 to enable the petitioner to marry with the prosecutrix. Accordingly, both of them got married on 5.7.2022. He has drawn the attention of this Court to the marriage certificate of the petitioner and the prosecutrix, which is placed on record. To buttress his arguments, he submits that now the prosecutrix has been examined by the trial Court as PW-5, where, she has not supported the case of the prosecution and thus, was declared hostile. He has submitted that as the petitioner and the prosecutrix both are married and thus, the allegations in the FIR pertaining to establishing the physical relationship with the prosecutrix on the premise of misconception of fact, do not survive and hence, no offence under Section 376 IPC is made out. He submits that the petitioner has no criminal antecedents and in view of the facts and circumstances of the present case, he be enlarged on bail.

Learned State counsel submits that though the prosecutrix and

the petitioner are major, however, she supported the case of the prosecution in her statement recorded under Section 164 Cr.P.C. However, he candidly acknowledges that both the petitioner and the prosecutrix are married and the prosecutrix has been examined as PW-5 and she has not supported the case of the prosecution. He further submits that out of total 21 prosecution witnesses, 12 witnesses already stands examined including the prosecutrix.

After hearing learned counsel for the parties and perusing the record, it is apparent that the petitioner and the prosecutrix both are of the age of the majority. The allegations were made by the prosecutrix for establishing physical relationship with her by the petitioner on the premise of false promise of marriage made to her, however, after registration of the FIR the petitioner and the prosecutrix are married and as on date, they are husband and wife. Besides this, the prosecutrix has been examined by the trial Court as PW-5 and she has not supported the case of the prosecution. A perusal of the statement of the prosecutrix would show that she deposed that accused Ajay present in Court, neither enticed her on the pretext of marriage nor committed rape with her, hence, she was declared hostile. There is nothing on record showing that the petitioner has any criminal antecedents. The veracity of the allegations would be evaluated by the trial Court only after conclusion of the trial. The trial would take sufficient long time for its conclusion.

In the overall facts and circumstances of the case, 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)
5.8.2022		JUDGE
sharmila	Whether Speaking/Reasoned :	Yes/No
	Whether Reportable :	Yes/No