

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

(217)

CRM-M-40355-2021

Date of Decision: 14.03.2022

Sumit Kumar

--Petitioner

Versus

State of U.T., Chandigarh

--Respondent

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

Present:- Mr. Manohar Lal, Advocate for the petitioner.

Mr. Abhinav Gupta, Addl. P.P., U.T., Chandigarh.

Mr. H.S. Kahlon, Advocate for the complainant.

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.57/2021 dated 30.6.2021 registered under Sections 376(2)(n) IPC at Police Station, I.T. Park, Chandigarh.

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 and the petitioner, who are of the age of majority, were in relationship since 2010. The prosecutrix alleged that since the year 2010 both had been in consensual relationship and at number of places they continued with the physical relationship on the promise of marriage by the petitioner. It was also alleged that number of times the petitioner had taken money from the prosecutrix but whenever she asked to return the same he refused for the same. In between the petitioner went to Singapore and then he contacted the prosecutrix from an international number and again their relationship continued but finally the marriage between them did not take place and the present FIR was lodged.

The investigation commenced and petitioner was arrested on 1.7.2021. He approached learned Addl. Sessions Judge, Chandigarh for grant of bail, however, after hearing the parties, the same was declined vide order dated 15.9.2021. Aggrieved by the same petitioner has approached this court for grant of bail.

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 the prosecutrix is 35 years of age, whereas the petitioner is 38 years old and hence both are of the age of majority. Counsel submits that admittedly both of them were in consensual relationship since the year 2010. It is submitted that if the allegations are taken to be true on their face value, then the physical relationship between both of them remained continued since 2013. It is further submitted that as the relationship between both of them had been consensual, the consent of the prosecutrix cannot be said to be vitiated by the misconception of the fact. Counsel submits that as of now the prosecutrix has been duly examined by the Trial Court and there are material contradictions in her deposition. Counsel submits that in the facts and circumstances of the case, it is a debatable issue whether an offence under Section 376 I.P.C is made out against the petitioner or not. Counsel has placed reliance upon a judgement of the Hon'ble Supreme Court in ***Parmod Suryabhan Pawar Vs. The State of Maharashtra and others, (2019) 9 SCC 608***. He has argued that as the material witnesses already stand examined and the petitioner has never been involved in any such cases and hence there cannot be any threat whatsoever in releasing him on bail.

Learned counsel for the complainant has opposed the submissions made by counsel for the petitioner. He submits that there are specific allegations of having established physical relations with the petitioner on the promise of marriage. Counsel submits that prosecutrix was never aware of the fact that the petitioner was already married. It is further submitted that the contradictions as contended are not material and the prosecutrix has duly supported the case of the prosecution and thus the petitioner does not deserve the concession of bail. Counsel has relied upon the judgements of Hon'ble Supreme Court in ***Yedla Srinivasa Rao Vs. State of A.P., 2006(4) R.C.R (Criminal) 474*** and ***The State of Kerala Vs. Mahesh, Criminal Appeal No.343 of 2021***. Counsel submits that petitioner has committed a heinous offence and in view of the judgements referred to herein above, petitioner does not deserve the concession of bail.

Learned State counsel has submitted that there are specific allegations of rape against the petitioner. He submits that in all there are 21 prosecution witnesses out of which 5 including the prosecutrix have been examined.

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

Admittedly, both petitioner and the prosecutrix are of the age of majority. The relationship between both of them was since the year 2010 and thereafter since the year 2013 there were physical relations between both of them, however, the prosecutrix has alleged that physical relations were established on the promise of marriage by the petitioner. Admittedly, prosecutrix has already been examined before the Trial Court. The judgements relied upon by counsel for the complainant are distinguishable.

The veracity of the allegations would be evaluated by the Trial Court on appreciation of the complete evidence to be led during the trial. However, this Court would refrain itself from commenting anything on merits of the case. 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

14.03.2022

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