

**102+216 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CRM-28765-2022 in/and
CRM-M-43136-2021
Date of decision: 17.08.2022**

DEEPAK KUMAR

VERSUS

...APPLICANT/PETITIONER

STATE OF HARYANA ...RESPONDENT

CORAM: HON'BLE MR. JUSTICE VIVEK PURI

Present: Ms. Sehaj Sandhawalia, Advocate
for the petitioner.

Mr. Zorawar Singh Chauhan, DAG, Haryana.

VIVEK PURI,J. (ORAL)

CRM-28765-2022

This is an application for addition of Section 67-A of Information and Technology Act in the main petition as well as prayer clause. It has been stated that the said offence has been added subsequent to the registration of FIR. The same is allowed.

Registry to do the needful.

Main case

Custody certificate of the petitioner has been circulated today and the same is taken on record.

Deepak Kumar-petitioner is seeking regular bail in the case bearing
FIR No.177 dated 04.06.2021 under Sections 354/354-D/376/506/384 IPC, 1860,
registered at Police Station City Thanesar, District Kurukshetra.

Briefly, the allegations against the petitioner are to the effect that he had established physical relations with the prosecutrix on the false pretext of marriage. Besides, he had taken some objectionable photographs. On an inquiry,

RENU BALA
2022.08.18 the prosecutrix came to know that the petitioner was already married and father of
I attest to the accuracy and
integrity of this document

three children. The petitioner had been threatening the prosecutrix, not to disclose the incident to anyone. The prosecutrix solemnized marriage on 03.01.2021 and was leading good married life. Thereafter, the petitioner again started calling and messaging her, threatened to make her obscene photographs viral and asked her to meet him. He even threatened the prosecutrix to obtain divorce from the husband.

Learned counsel for the petitioner contends that it was a case of consensual relationship. There is no allegation to the effect that the petitioner has sexually abused the prosecutrix after she had solemnized marriage with some other person. Even, the husband of the prosecutrix has instituted a petition under Sections 11/12 of Hindu Marriage Act wherein, he has alleged that the prosecutrix has solemnized marriage with the petitioner. Even, the petitioner has been impleaded as party in the said proceedings. The recovery of mobile phone has been effected from the petitioner. Even, the prosecutrix had refused to produce and deliver the mobile phone to the Investigating Agency which tends to falsify the allegation with regard to commission of offence under Section 67-A of the Information and Technology Act. The statement of the prosecutrix who is aged about 28 years has been recorded during the course of trial.

Learned State counsel has opposed the bail application on the score that there is categoric allegation with regard to commission of rape on the false pretext of marriage levelled against the petitioner. Though, the mobile phone of the petitioner has been recovered but the report of FSL on the mobile phone has not yet been procured as the same was found to be locked. Furthermore, out of 16, 08 witnesses have already been examined.

Be that as it may, the custody certificate indicates that the petitioner is in custody for a period of 01 year, 02 months and 10 days and is not involved

in any other criminal case. The controversy as to whether the petitioner and the prosecutrix were in a consensual relationship or not will be a moot and debatable point during the course of trial. The prosecutrix is aged about 28 years. She has solemnized marriage with another person. There is no allegation to the effect that subsequent to her marriage, the petitioner had committed sexual intercourse with the prosecutrix. The statement of the prosecutrix has been recorded during the course of trial and as such, it cannot be said that the petitioner can win over or influence her in any manner. 08 witnesses still remain to be examined. The conclusion of the trial is likely to take some time. No fruitful purpose will be served by detaining the petitioner in further custody. As such, sufficient mitigating circumstances are made out to extend the concession of bail to the petitioner.

Without expressing any opinion on the merits of the case, the instant petition is allowed. The petitioner is ordered to be released on bail on his furnishing requisite bail bonds to the satisfaction of the learned trial Court/Duty Magistrate concerned.

The petition is allowed accordingly.

17.08.2022
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(VIVEK PURI)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No