

CRM-M No.38649 of 2020
Date of decision: 17.02.2022

Gursewak Singh ...Petitioner

Versus

State of Haryana and another ...Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Sumeet Singh Brar, Advocate
for the petitioner.

Mr. Vishal Kashyap, DAG, Haryana.

Ms. Shruti Rathour, Advocate
for respondent No.2-Complainant.

RAJESH BHARDWAJ, J. (Oral)

Matter has been taken up through video conferencing via Webex facility in the light of the Pandemic Covid-19 situation and as per instructions.

The present petition has been filed under Section 439 Cr.P.C seeking the benefit of regular bail to the petitioner in case FIR No.137 dated 29.04.2019 under section 346 of IPC (later on added sections 366, 376(2) (n), 342, 506 of IPC), registered at Police Station, Rania, District Sirsa, Haryana.

The facts of the prosecution case are that the present FIR was lodged by father of the victim, namely, Chhotu Ram. It was alleged that his daughter (prosecutrix), who was 20 years of age, was found missing on 27.04.2019, when they were sleeping. They made their best of the efforts, however, failed to trace out her. It was suspected that either his missing

daughter was hiding herself or some one had kidnapped her. A request was made to conduct the thorough inquiry and take action against the culprits.

On commencement of the investigation, the petitioner was arrested on 24.04.2020. He approached the learned Sessions Judge, Fast Track Special Court, Sirsa for the grant of bail, however, after hearing counsel for the parties, the same was declined vide order dated 13.08.2020. Aggrieved by the same, petitioner has approached this Court by way of this petition for grant of regular bail.

Learned counsel for the petitioner has contended that the present case is nothing but an abuse of the process of the Court as both the petitioner and the prosecutrix are of the age of majority and their relationship at the most, in peculiar facts and circumstances is consensual. He submits that as per the prosecution case, the petitioner along with the prosecutrix, eloped on 29.04.2019 and thereafter, untraced report was prepared on 06.04.2020. However, on 20.04.2020, the victim was recovered from village Pilimandori, District Fatehabad and thereafter, her statement under Section 164 Cr.P.C. was recorded on 21.04.2020, wherein, she stated that she was in love with the petitioner, who came to her in the morning on 26.04.2019 at about 4.00/5.00 A.M. and she voluntarily accompanied him to the house of his sister in Kala Banjara in Punjab. They resided in a rented premises for 15 days and the petitioner allured her for performing the marriage. During their stay together, she discovered some documents and photographs in this regard, revealing the truth of the petitioner that he was already married. However, he assured her that he would take divorce from his first wife and marry her. During their stay, the prosecutrix got pregnant.

It has been contended by the learned counsel for the petitioner that the facts

and circumstances of the case are self speaking that the petitioner and the prosecutrix remained together voluntarily for about one year during which, the prosecutrix was got pregnant. However, the alleged dispute was only on account of the fact that the prosecutrix was suspecting that the petitioner was already married and clandestinely concealed this fact from her. He has submitted that in such facts and circumstances where the petitioner and the prosecutrix, both are of age of the majority, and were in consensual relationship, the offence of the rape is made out or not is totally a debatable issue. Even otherwise, now the complainant already stands examined and thus, there is no apprehension of tampering with the ongoing trial at the behest of the petitioner. He has submitted that in the overall facts and circumstances of the case, the petitioner is behind the bars since 24.04.2020 and the petitioner deserves to be enlarged on bail.

Learned counsel for the complainant has opposed the contentions raised by the learned counsel for the petitioner. It is submitted that the petitioner allured the prosecutrix on the promise of the marriage. He concealed the very fact that he was already married. She acknowledged that both the petitioner and the prosecutrix are major. She has further informed the Court that the prosecutrix is blessed with a daughter (from the loins of the petitioner), who is 01 year and 9 months of age. The parents of the prosecutrix are looking for a suitable match for her. She has argued that the petitioner concealed the fact of his earlier marriage from the prosecutrix and thus, he is liable to be tried for the offence under Section 376 Cr.P.C.

Learned counsel for the State submits that there are specific allegations against the petitioner of having concealed the fact of his first

marriage from the prosecutrix who eloped with him on the assurance given by the petitioner for the marriage. He submits that there are 25 prosecution witnesses, out of which, 03 including prosecutrix and the complainant already stands examined.

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

It is evident from the facts of the case that the petitioner and the prosecutrix are of the age of majority and they stayed together for about one year and during this period, the prosecutrix got pregnant. However, in the peculiar facts and circumstances, when both the prosecutrix and the petitioner are of age of majority and they stayed together for one year, the offence under Section 376 IPC is attracted or not that is totally the subject matter of the trial Court to be decided after the appreciation of the evidence to be led by both the parties. However, the prosecutrix and the complainant already stand examined and the petitioner is behind the bars about for the last two years. The trial would take sufficiently long time in its conclusion.

In the totality of facts and circumstances and without making any observation on merits, learned counsel for the petitioner has been able to make out a case for the grant of bail to the petitioner. Consequently, the 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

17.02.2022
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Whether speaking / reasoned : Yes/No
Whether reportable : Yes/No