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

CRM-M-42775-2022(O&M)
Date of decision: 14.11.2022

RAJA RAM **...PETITIONER**

VERSUS

STATE OF HARYANA AND ANR. **...RESPONDENTS**

CORAM: HON'BLE MR. JUSTICE VIVEK PURI

Present: Mr. Keshav Pratap Singh, Advocate and
Mr. Rajat Singh, Advocate for the petitioner.

Mr. Karan Garg, AAG, Haryana.

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VIVEK PURI,J. (ORAL)

Mr. Sarvesh Malik, Advocate has put in appearance on behalf of respondent No.2 and filed Vakalatnama, which is taken on record.

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

Raja Ram-petitioner is seeking regular bail in the case bearing FIR No.146 dated 17.03.2022, under Sections 323/354-A/354-D/376/201/506/180 IPC, 1860, (Section 180 added later on) registered at Police Station Pinjore, District Panchkula.

Briefly, the FIR has been registered on the basis of the statement of the prosecutrix alleging that the petitioner is working as Lineman, she had made a call to him for getting some problem/defect of electricity repaired. The petitioner had been sending messages to the prosecutrix and asking her to become friends but she had been refusing to do so. On 16.06.2021, the petitioner visited the house of the prosecutrix and forcibly asked her to develop relations. On 21.08.2021, the petitioner again visited the house of the complainant under the effect of liquor and started removing her clothes and touched her inappropriately. On 30.08.2021, the petitioner along with his mother, sister and one Kuldeep had given beatings to her.

Learned counsel for the petitioner contends that in the FIR, there is no

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allegation with regard to the commission of offence under Section 376 IPC. At the most, the allegations indicate that the petitioner had made an attempt to commit rape. He further submits that the prosecutrix is aged about 55 years and the petitioner is aged about 37 years. The complaint on the basis whereof FIR has been registered was submitted to the police authorities on 16.03.2022 after a delay of about 09 months from the date of first occurrence and 07 months from the date of second occurrence. Furthermore, on 30.08.2021, on the basis of the application submitted by the mother of the petitioner, the proceedings under Sections 107/150 Cr.P.C were also initiated against the prosecutrix and others. During the course of said proceedings, the statement of the prosecutrix was also recorded on 25.12.2021 and 07.09.2021. Even, in those statements, the prosecutrix had neither levelled allegations with regard to commission of rape nor with regard to attempt to commit rape. Even, in the FIR, there is no allegation with regard to commission of rape. For the first time, the allegations with regard to the rape have been levelled in the statement under Section 164 Cr.P.C that has been recorded on 19.03.2022. Besides, the Whatsapp messages were exchanged between the parties which indicate that the relationship if any, between the parties was consensual. The petitioner is in custody for a period of 07 months and 11 days and the investigation of the case is complete.

Learned State counsel and counsel for respondent No.2 have opposed the bail application on the score that the call details of the mobile phones of the petitioner and the prosecutrix were procured during the course of investigation and the tower location was found to be in the house of the prosecutrix as on 21.08.2021. Although, the charge has been framed but the prosecutrix is yet to be examined.

It is significant to note that the alleged occurrence took place on 16.06.2021 and 21.08.2021 and the FIR has been lodged after a substantial delay of about 07 months from the date of second occurrence. In the FIR, there is no allegation with regard to commission of rape. During the intervening period, the proceedings under Sections 107/150 Cr.P.C were also initiated against the prosecutrix at the instance of the mother of the petitioner. In the said proceedings, the statement of the

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prosecutrix was recorded on two occasions and in none of the statements, she had imputed allegations of commission of rape/attempt to rape against the petitioner. The Whatsapp chats are indicative of the fact that the relationship if any, between the parties was consensual. The investigation of the case is complete, challan has been presented and the charges have been framed.

In view of the peculiar circumstances emerging in the instant case, merely because the statement of the prosecutrix has not been recorded cannot be termed to be a significant circumstance to decline the concession of bail. The petitioner is in custody for a period of 07 months and 11 days and is not involved in any other case. In the instant case, out of 16, no witness has been examined till date. The conclusion of trial is likely to take sometime. 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.

14.11.2022 **(VIVEK PURI)**
renubala **JUDGE**

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

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