

CRM-M-43952-2022

Date of decision: 02.12.2022

MOHD. HUMAYU @ SABBU

...PETITIONER

VERSUS

STATE OF HARYANA

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE VIVEK PURI

Present: Mr. Vikas Kumar, Advocate for the petitioner.

Mr. Karan Garg, AAG, Haryana.

VIVEK PURI, J. (ORAL)

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

Mohd. Humayu @ Sabbu-petitioner is seeking regular bail in the case bearing FIR No.303 dated 15.06.2022 under Sections 376(2)(n)/323 IPC, 1860 and Section 10 and 12 of Protection of Children from Sexual Offences Act, 2012, registered at Police Station Saran, Faridabad, District Faridabad.

Briefly, FIR has been registered on the basis of the statement of the prosecutrix alleging that her marriage was solemnized in the year 2004 and is having two children from the wedlock. Her son had passed away and the daughter aged about 16 years is residing with her. The husband of the prosecutrix had abandoned her. The prosecutrix was in relationship with the petitioner and the physical relations were developed for the past 11 years on the assurance of the marriage. Subsequently, the petitioner refused to solemnize marriage.

Learned counsel for the petitioner contends that the petitioner was in consensual relationship with the prosecutrix. There are false allegations to the effect that he refused to solemnize marriage with her. Even, the allegations with regard to sexual assault upon the daughter of the prosecutrix are a result of

afterthought. The said allegations have emerged in the supplementary statement and were not reflected when the FIR was lodged.

Learned State counsel has opposed the bail application on the score that the serious allegations have been levelled against the petitioner and the prosecution witnesses are yet to be examined.

As per the contents of the FIR, the petitioner and the prosecutrix were in relationship for a period of 11 years. It will remain a debatable and moot point as to whether the petitioner was in consensual relationship with the prosecutrix or it was on the basis of false promise to solemnize marriage. The allegations with regard to sexual assault upon the minor daughter of the prosecutrix have emerged at a subsequent stage to the registration of the FIR. The petitioner is in custody for a period of 05 months and 16 days and is not involved in any other case. The prosecution is required to examine 18 witnesses and till date no witness has been examined. 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.

02.12.2022

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(VIVEK PURI)
JUDGE

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No