

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

CRM-M-51451-2021

Date of decision : 10.03.2022

Jeevan**.... Petitioner****Versus****State of Haryana****.... Respondent****CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ**

Present: Mr. Shivansh Malik, Advocate
for the petitioner.

Mr. B.S. Virk, D.A.G., Haryana.

Mr. Lokesh Sharma, Advocate
for the complainant.

RAJESH BHARDWAJ, J. (ORAL)

Prayer in the present petition is for grant of regular bail to the petitioner in case FIR No.452 dated 15.07.2021, under Section 346 of the Indian Penal Code (Sections 376(2)(n), 379-A, 365, 328, 506 and 201 of IPC added later on), registered at Police Station Rohtak City.

As per factual matrix of the case, the present FIR was lodged by husband of the prosecutrix, Praveen Kumar. It was alleged that he got married on 20th May, 2012 with the prosecutrix (name concealed) and blessed with two sons. His wife left the home on the intervening night of 14/15-07.2021 without disclosing him and took along with her jewellery and clothes. The family members searched a lot at their own level but failed to trace her. Her age was stated to be 29 years. Request was made to trace her and to take legal action against the culprits. In pursuance to the same, the investigation commenced and the prosecutrix was finally recovered on 28th July, 2021 from Pushkar, Rajasthan and thereafter, her statement under Section 164 Cr.P.C.

was got recorded. The petitioner was arrested on 28th July, 2021. He approached the learned Additional Sessions Judge, Rohtak for grant of bail, who after hearing counsel for the parties, declined the same vide order dated 16th November, 2021. Aggrieved by the same, the petitioner has approached this Court for grant of regular bail.

It has been contended by counsel for the petitioner that petitioner is an unmarried boy, who in relation, is brother-in-law of brother of the prosecutrix. He submits that both the petitioner and the prosecutrix are of the age of majority. He has drawn the attention of this Court to the CCTV footage wherein, the prosecutrix and the petitioner are shown to be moving out freely without any coercion. He submits that he has placed on record the whatsapp chats between the petitioner and the prosecutrix. To butteress his arguments that the relationship between the petitioner and the prosecutrix was at the most consensual one, he relies upon the judgment titled as Pramod Suryabhan Pawar Vs. The State of Maharashtra and others (2019) 9 SCC 608 and submits that as both the petitioner and the prosecutrix are of the age of majority and their relationship is consensual then the consent of the prosecutrix is not vitiated by the misconception of the fact and hence, no offence under Section 376 IPC is attracted in the present case. He submits that the petitioner is behind the bars since 28th July, 2021 and the investigation already stands completed. He has never been involved earlier in any case of the like offence and having an impeccable record, he deserves to be granted bail.

Learned counsel for the complainant has vehemently opposes the submissions made by counsel for the petitioner. He submits that after recovery of the prosecutrix from Pushkar, Rajasthan, her statement under Section 164 Cr.P.C. was recorded on 28th July, 2021. He further submits that the prosecutrix has specifically levelled the allegations of threatening and having

been raped by the petitioner number of times without her consent. He has submitted that as the prosecutrix has specifically levelled the allegations of rape against the petitioner, the petitioner does not deserve the concession of bail.

Learned State counsel has submitted that the prosecutrix was recovered after about 13 days from the date of lodging of the FIR from Pushkar, Rajasthan and in her statement, she has specifically levelled the allegations of rape against the petitioner. He further submits that investigation in this case is complete and the case is fixed for framing of the charge.

I have heard learned counsel for the parties and perused the record.

It is apparent from the record of this case and arguments raised by the counsels that the prosecutrix is a married woman and mother of two children and she left her matrimonial home on 14th/15th July, 2021 without informing anyone at home. The FIR was lodged by the husband whereas, the prosecutrix was recovered from Pushkar Rajasthan after 13 days from the date of lodging of the FIR and thereafter, her statement under Section 164 Cr.P.C. was recorded. She deposed in her statement that she was taken to Jaipur by bus and thereafter, they stayed at Ajmer in a hotel for two days. The petitioner and the prosecutrix were moving from one place to another by public transport and they remained at the different public places. Investigation in this case already stands completed.

The trial of the case will take sufficient time and no useful purpose will be served by keeping the petitioner in custody for such a long time. This Court would refrain itself from commenting anything on the merits of the case at present. The veracity of the allegations from both the sides would be evaluated by the trial Court on the basis of the evidence to be led by the parties during the trial. However, in the overall facts and circumstances, confining to the prayer made for grant of bail, this Court finds that learned

counsel for the petitioner has succeeded in making out a case for grant of regular bail. Accordingly, the present petition is allowed and the petitioner is ordered to be released on bail on his furnishing bail/surety bonds to the satisfaction of the concerned trial Court/Duty Magistrate. Nothing said herein shall be treated as an expression of opinion on the merits of the case.

10.03.2022
m. sharma

(RAJESH BHARDWAJ)
JUDGE

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