

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

207

CRM-M No.47967 of 2022
Date of decision:21.10.2022

Surender Yadav

... Petitioner

Vs.

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr. Aditya Sanghi, Advocate for the petitioner.

Ms. Deepshikha Chauhan, AAG, Haryana.

SUVIR SEHGAL J. (ORAL)

This is the second petition filed by the petitioner under Section 439 of Cr.P.C. for grant of regular bail in case FIR No.87, dated 11.04.2022 registered for offence under Sections 376 (2) (n) and 313 of IPC, at Police Station Women West Gurugram, District Gurugarm, Annexure P-2.

Version of the prosecution is that FIR, Annexure P-2, has been registered on the statement of a 37 years old married lady on the allegation that she came in contact with the petitioner through social media in the year 2016 and he forcibly developed physical relations with her. It has been alleged that when she became pregnant in 2019, the petitioner gave her pills and forced her to abort the fetus. He destroyed all the reports pertaining to the pregnancy. He kept on visiting her and on 26.02.2022, a day before his birthday, again had forcible relations with her. An argument took place between them the next day, when the

petitioner threatened her.

Counsel for the petitioner has contended that there is a delay in the registration of the FIR and as per the allegations levelled by the prosecutrix, she has been in a physical relationship with the petitioner, who is a married man, for the last 06 years. While making a reference to the final report, Annexure P-10, counsel has argued that offence under Section 313 of IPC has not been made out. He has invited the attention of the Court to the testimony of the prosecutrix, Annexure P-13, to urge that there were financial transactions between them in the financial year 2020-2021 and in her cross-examination, the prosecutrix has admitted that the petitioner helped her and her sibling in getting employment. Counsel submits that FIR, Annexure P-2, is a counter blast to the FIR, Annexure P-4, lodged by the petitioner against the prosecutrix as she had intimidated and extorted money from him. It is his specific case that intimate relations between the parties were consensual. He has placed reliance upon the judgments of the Supreme Court in **Maheshwar Tigga versus State of Jharkhand 2020 (4) RCR (Criminal) 469** and **Mandar Deepak Pawar versus The State of Maharashtra and another 2022 (4) RCR (Criminal) 274**. Counsel submits that the first petition (CRM-M-21761-2022) was withdrawn vide order dated 30.09.2022, Annexure P-14, in view of change in circumstances, with liberty to approach the Trial Court, where the petitioner has been unsuccessful. He asserts that the petitioner, who has a family to support, deserves to be released on bail as the trial is likely to take time to conclude.

Per Contra, State counsel, upon instructions from L/ASI Surekha, has opposed the petition and has submitted that the allegations

against the petitioner, who has been specifically named, are serious and have been supported by the prosecutrix in her statement recorded under Section 164 of Cr.P.C. She submits that the medical examination of the prosecutrix was conducted on 12.04.2022, but no definite opinion was given by the examining doctor. She submits that charge has been framed under Section 376 (2) (n) of IPC and 09 out of 13 prosecution witnesses have been examined.

Having considered the submissions made by counsel for the parties, this Court is *prima facie* of the view that the involvement of the petitioner in the offence and the question of consent by the prosecutrix would remain a subject matter of debate before the trial court. Considering the nature of allegations, stage of trial, length of custody and the fact that the most crucial prosecution witness has been examined, this Court is of the view that the petitioner would be entitled to be released on bail during the pendency of trial.

Without adverting to the merits or de-merits of the arguments addressed by counsel for the parties, petition is allowed. Petitioner is ordered to be enlarged on bail on furnishing bail/surety bonds to the satisfaction of the Trial Court/Duty Magistrate concerned.

It is clarified that any observation made hereinabove shall not be construed to be an expression of opinion on the merits of the case.

21.10.2022*sheetal***(SUVIR SEHGAL)
JUDGE**

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No