

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

CRM-M-49051-2022

Date of decision : 28.10.2022

Sunil Kumar Kumawat

.....Petitioner

versus

State of Haryana

..... Respondent

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present :- Mr. Sahil Gupta, Advocate
for the petitioner.

Mr. B.S. Virk, DAG, Haryana.

RAJESH BHARDWAJ, J. (Oral)

Prayer in the present petition is for grant of regular bail to the petitioner in case FIR No.567 dated 09.11.2019, under Sections 346, 328, 376, 506 of IPC (Sections 328, 376, 506 IPC added and Section 376-D deleted later on), registered at Police Station City Mahendergarh, District Mahendergarh, Haryana.

Adumbrated facts of the case are that the FIR was lodged by father of the prosecutrix wherein it was alleged that his daughter i.e. the prosecutrix is married in Village Dongra. She had some tiff with her in-laws, on account of which, she was residing in her parental home. On 06.11.2019, she had gone out on the pretext of buying some articles but thereafter, she did not return. They tried their level best to search her but failed in tracing her out. The request was made to trace his daughter. On the basis of the complaint, the FIR was lodged and the investigation commenced. During the investigation, the prosecutrix was recovered on 28.11.2019 i.e. after 22 days. The prosecutrix was produced before the learned Sub Divisional Judicial Magistrate, Mohindergarh on 30.11.2019

and her statement was recorded under Section 164 Cr.P.C. The petitioner was arrested on 30.11.2019. He approached the Court of Additional Sessions Judge, Narnaul praying for grant of bail. However, after hearing counsel for the parties, learned Additional Sessions Judge, Narnaul declined the same vide her order dated 04.10.2022. Aggrieved by the same, the petitioner is before this Court praying for grant of regular bail.

It has been contended by counsel for the petitioner that the petitioner has been falsely implicated in this case. He submits that the petitioner and the prosecutrix both are of the age of majority. He submits that the petitioner is unmarried whereas the prosecutrix is married. He has submitted that as per case of the prosecution, prosecutrix went missing from her home on 06.11.2019 and was recovered on 28.11.2019. He has submitted that her statement was recorded under Section 164 Cr.P.C. wherein she deposed that she voluntarily took lift from the petitioner on his motorcycle who took her to the village of his sister. She stayed there in the night. Thereafter, she deposed that the petitioner and his brother-in-law committed wrongful act with her in the night. She further deposed that thereafter, she was taken to Ahmadabad. He submits that the prosecutrix who is of the age of majority and married woman cannot be expected to be forced for taking her from one place to another without her consent. He submits that after her recovery, she was sent to her parents and it is under the compulsion of his parents, she deposed against the petitioner. He has further submitted that in her statement, she has levelled allegations not only against the petitioner but she named other accused as well. However, during investigation, the allegations *qua* other persons were found false and hence, the challan was filed only against the present

petitioner. He has submitted that the credibility of the statement of the prosecutrix is seriously doubtful. He submits that the petitioner is behind bars from the last three years and the prosecution could examine only five witnesses till date. He further submits that the prosecutrix is a married woman and from the last about 04 dates, she is not even appearing before the trial Court for her deposition. She has submitted that all efforts are being made to delay the trial to keep the petitioner behind bars. He further submits that the petitioner has no criminal antecedents and has never been involved in any other case except the present case. He has also submitted that in the facts and circumstances of the case when both the petitioner and the prosecutrix are of the age of majority and at the most, their relationship could be consensual and hence, the offence under Section 376 IPC would not be attracted. He submits that in the facts and circumstances of the case, the petitioner deserves to be granted bail.

Learned State counsel has submitted that the prosecutrix has levelled specific allegations against the petitioner. He allured her on the pretext of giving lift and thereafter, he committed rape with her. He further submits that the investigation was completed and the report under Section 173 Cr.P.C. was filed, however, the other accused named in the FIR was found innocent and hence, the challan was presented only against the petitioner. He submits that out of 16 prosecution witnesses, 05 witnesses already stand examined. He further submits that as per the instructions, the petitioner has no criminal antecedents.

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

Evidently, the prosecutrix went missing on 06.11.2019 and was recovered on 28.11.2019 i.e. 22 days thereafter. She is of the age of majority and is already married. Though the petitioner is behind bars from last about three years, however, the prosecution has examined only 05 witnesses out of 16 witnesses. As argued by learned counsel for the petitioner, the prosecutrix is not coming forward for her deposition from last about 04 dates. The Court cannot be oblivious of the fact that every accused has a right of speedy trial. There is nothing on record to show that the petitioner has been involved in any other case except the present case.

The trial of the case will take sufficient long time. The veracity of the allegations would be assessed only after conclusion of the trial. However, keeping in view the facts and circumstances of the case and long custody of the petitioner, this Court is of the opinion that the petitioner deserves to be granted 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.

(**RAJESH BHARDWAJ**)
JUDGE

28.10.2022
m. sharma

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