

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

(217)

CRM-M-53972-2021

Date of Decision: 17.03.2022

Kuldeep @ Kalu

--Petitioner

Versus

State of Haryana

--Respondent

CORAM:- HON'BLE MR. JUSTICE RAJESH BHARDWAJ.

Present:- Mr. Vikram Singh, Advocate for the petitioner.

Mr. Vishal Kashyap, D.A.G., Haryana.

IO ASI Parvesh Kumari (through virtual mode).

RAJESH BHARDWAJ.J (Oral)

Matter has been taken up through video conferencing via Webex facility in the light of the Pandemic Covid-19 situation and as per instructions.

The present petition has been filed under Section 439 Cr.P.C seeking the benefit of regular bail to the petitioner in case FIR No.325 dated 5.8.2018 under sections 376, 452, 506 I.P.C registered at Police Station, Indri, District Karnal.

As per factual matrix, the FIR in question was lodged by the prosecutrix, wherein it was alleged that she is a widow aged about 42 years residing with her son Mohit, who is doing agriculture work. It was further alleged that Kuldeep @ Kalu i.e. the present petitioner forcibly entered her house and forcibly established physical relations with the prosecutrix. In order to save her honor she kept mum for many days. However, on 4.8.2018 Kuldeep @ Kalu again trespassed in her home in the evening at about 6.30/7.00 PM and a fight took place between her family members and

Kuldeep. A request was made to take legal action against the culprit.

After registration of FIR the investigation commenced, however, the petitioner avoided his arrest and he remained P.O for about 1 ½ years. He was finally arrested on 10.2.2020. He approached learned Addl. Sessions Judge, Fast Track Court, Karnal for grant of bail. However, after hearing the parties, the same was declined vide order dated 11.11.2021. Aggrieved by the same petitioner has approached this court for grant of bail.

Learned counsel for the petitioner vehemently contends that the petitioner has been falsely implicated in the present FIR. Counsel submits that both the petitioner and the prosecutrix are of the age of majority. The prosecutrix is a widow, more than 40 years of age and both were neighbors. It is further submitted that the motive behind lodging the present FIR is that on 4.8.2018 an altercation of the petitioner took place with the son of the prosecutrix in which the petitioner was beaten. Though, the petitioner approached the police, however, no action was taken on that day. Thereafter, on the complaint of the petitioner, the police registered FIR No.326 dated 6.8.2018 under sections 323, 324, 34, 342, 427 I.P.C at Police Station, Indri District Karnal against the son of the prosecutrix. It is submitted that the prosecutrix in order to settle the score lodged the present FIR on 5.8.2018. Counsel submits that the prosecutrix is a habitual litigant which is evident from the fact that during the life time of her husband she eloped with the petitioner and FIR No.404 dated 27.10.2013 under Section 365 I.P.C was registered by her husband. On her recovery she was produced before the concerned Magistrate and her statement under Section 164 Cr.P.C was recorded. She deposed that she went to Baddi with her free

will with Kuldeep @ Kala i.e. the present petitioner. Counsel submits that in the facts and circumstances of the present case at the worst, if the allegations are taken to be on their face value, the relationship between the prosecutrix and the petitioner is consensual and hence no offence under Section 376 I.P.C is attracted. It is further submitted that though the petitioner was declared P.O, however, he is behind bars since 10.2.2020. It is further submitted that despite number of opportunities, the prosecutrix is intentionally not appearing before the Trial Court for her examination. The purpose of not appearing before the Trial Court is only to prolong the custody of the petitioner. Counsel submits that though there were 2 more FIRs registered against the petitioner, however, he has completed his 3 years sentence as awarded in FIR No. 448 dated 30.10.2014. Counsel submits that in the overall facts and circumstances of the case, petitioner deserves to be enlarged on bail.

On the other hand, learned State counsel has opposed the submissions made by counsel for the petitioner. He submits that after registration of the FIR the petitioner remained at large for a period of about 1 ½ years and later on he was arrested on 10.2.2020. He submits that prosecutrix has levelled specific allegations against the petitioner. State counsel has also drawn the attention of this Court to the observations made by learned Addl. Sessions Judge, Karnal while dealing with the bail application of the petitioner in para 8 wherein the petitioner was found to be involved in two more FIRs i.e. FIR No.448 dated 30.10.2014 under sections 323, 324, 34 IPC and FIR No.352 dated 22.9.2016 under sections 294, 506 IPC. However, learned State counsel candidly submits that despite summons being issued to the prosecutrix she has not appeared before the Trial Court.

The case is fixed for her examination before the Trial Court on 29.3.2022. It is thus submitted that petitioner does not deserve the concession of bail.

I have heard learned counsel for the parties at length and have gone through the record carefully.

Admittedly, petitioner is behind bars since 10.2.2020. Both petitioner and the prosecutrix are of the age of majority. As argued by counsel for the petitioner on earlier occasion the prosecutrix had eloped with the petitioner and she deposed in her statement recorded under Section 164 Cr.P.C that she went with the petitioner of her own free will. Despite opportunities prosecutrix is not appearing before the Trial Court. Though, as a matter of prudence the court normally consider the bail after examination of the prosecutrix, however, in case the same is being misused by the parties to prolong the trial, the same has to be deprecated. This court would refrain itself from commenting on the merits of the case, as the allegations and counter allegations would be assessed only after evaluation of the complete evidence led by both the sides before the Trial Court. Whether a case under Section 376 I.P.C is made out against the petitioner or not would be evaluated by the Trial Court after conclusion of the trial. The trial would take sufficiently long time in its conclusion.

In the totality of facts and circumstances and without making any observation on merits, present petition is allowed. Petitioner be enlarged on bail on his furnishing bail/surety bonds subject to satisfaction of Trial Court/Duty Magistrate, concerned. Nothing stated herein shall be treated as an expression on the merits of the case.

(RAJESH BHARDWAJ)
JUDGE

17.03.2022

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Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No