

236

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-2356-2022

Date of Decision: 24.05.2022

JAGDISH

... PETITIONER

V/S

STATE OF HARYANA

... RESPONDENT

CORAM: HON'BLE MR. JUSTICE VIVEK PURI

Present: Mr. Dheeraj Kumar Narula, Advocate for the petitioner.

Mr. Vikas Bhardwaj, AAG Haryana.

* * *

VIVEK PURI, J. (ORAL)

Custody certificate has been taken on record.

The petitioner is seeking regular bail in case bearing FIR No. 53 dated 05.11.2020 under Sections 323, 376, 450 and 506 IPC (511 and 451 IPC deleted later on and Section 450 added later on), registered at Police Station Women Dabwali, District Sirsa.

Briefly, as per the allegations of the prosecutrix, on 04.11.2020 at about 11 P.M., the prosecutrix who is aged about 80 years was sleeping in her room. The petitioner entered the room, took off his clothes, pulled the Ghagra of the prosecutrix and tried to commit wrong with her. When she raised objection, the petitioner sat on her chest and inflicted blows on her mouth and chest. On noticing someone present outside the room, the petitioner slipped away while extending threat to kill the prosecutrix.

Learned counsel for the petitioner contends that the prosecutrix is aged about 80 years, the petitioner has been falsely implicated as he is a witness in a criminal case which was registered against the brother-in-law of

the prosecutrix and furthermore, the statement of the prosecutrix during the course of trial has also been recorded. The report of FSL does not indicate that the sexual intercourse was in fact committed as no spermatozoa have been detected from the vaginal swabs as well as the clothings of the prosecutrix. The petitioner is in custody for a period of 1 year, 6 months and 18 days and not involved in any other case.

The bail application has been opposed on the score that the charge has been framed under Section 376 IPC and spermatozoa have been detected on the clothings of the petitioner as well as the gadda cover at the place of occurrence. Out of 15, 6 witnesses have been examined so far.

Although, the prosecutrix is 80 years old lady but the allegations in the FIR are indicative of the fact that attempt to commit rape was made. Even no spermatozoa have been detected from the clothings of the prosecutrix and the vaginal swabs. Though, the charge is stated to have been framed under Section 376 IPC but it will remain a debatable and moot point during the course of trial as to whether the offence under Section 376 or 376 read with Section 511 IPC is made out. The defence version of the petitioner is to the effect that he has been falsely implicated as he was a witness in a criminal case wherein the brother-in-law of the prosecutrix was arraigned as an accused. The statement of the prosecutrix has already been recorded and it cannot be said that there is any likelihood that he can win over or influence her. The petitioner is in custody for a period of 1 year, 6 months and 18 days and not involved in any other case. So far only 6, out of 15 witnesses have been examined and the conclusion of trial is likely to take some more time and no fruitful purpose would 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. Therefore, without making any expression of opinion on the merits of the case, it is ordered that the petitioner be released on regular bail subject to his furnishing fresh bail bonds/surety bonds to the satisfaction of the concerned trial Court/Chief Judicial Magistrate/Duty Magistrate.

The petition is allowed.

24.05.2022

Janki

(VIVEK PURI)
JUDGE

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