

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

(220)

CRM-M-54159-2021

Date of Decision: 03.03.2022

Jagdeep Singh

--Petitioner

Versus

State of Punjab

--Respondent

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

Present:- Mr. B.S. Aulakh, Advocate for the petitioner.

Ms. Sakshi Bakshi, A.A.G., Punjab.

RAJESH BHARDWAJ.J (Oral)

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

The present petition has been filed under Section 439 Cr.P.C for grant of regular bail to the petitioner in FIR No.184 dated 31.7.2020 registered under Sections 376(2)(n), 120-B IPC at Police Station, Gidderbaha, District Sri Muktsar Sahib.

As per facts of the case, present FIR was lodged by the prosecutrix (name concealed). It was alleged that she was 48 years of age and was doing labour work. She was married about 30 years ago to Jasveer Singh, however, 2 years thereafter she got divorce and got remarried to one Raja Singh son of Sham Singh resident of village Gurusar. Out of this marriage she was blessed with 5 daughters and 1 son. One of the daughters was given in adoption to Jasvinder Kaur i.e. mother of the present petitioner. In April, 2017 due to the ill health of Jasvinder Kaur, Jagdeep Singh brought her from her in-laws house to village Chormar. While his stay at Gurusar, Jagdeep Singh i.e. the petitioner committed wrong act with her. It was alleged that her husband was in drunken condition and she could

not tell the same to him. When she disclosed the same to Jasvinder Kaur i.e. mother of the petitioner, she asked her to keep mum. For about 9/10 months she was kept in village Chormar and thereafter Jagdeep Singh took her to Dabwali in a rented house. 5/6 months ago Jagdeep Singh left her at village Odhan and went to village Chormar and thereafter he never came back. It was alleged that Jagdeep Singh and his mother Jasvinder Kaur told her that they would not keep her. Jagdeep Singh forcibly committed wrong act with her and hence a request was made to take legal action against the culprits.

The investigation commenced and petitioner and his mother Jasvinder Kaur were named as accused. Petitioner was arrested on 24.2.2021. He approached learned Addl. Sessions Judge, Sri Muktsar Sahib for grant of bail, however, after hearing the parties, the same was declined vide order dated 8.11.2021. Aggrieved by the same petitioner has approached this court for grant of bail.

Learned counsel for the petitioner has vehemently contended that the petitioner has been falsely and frivolously implicated in the present case. It is submitted that petitioner is 27 years of age, whereas the prosecutrix is more than 50 years of age and mother of 6 children. It is submitted that in relation prosecutrix is the maternal aunt of the petitioner. Counsel submits that perusal of the allegations in the FIR would show that the story put forth by the prosecutrix is highly improbable and the allegation of alleged rape in the month of April, 2017 at village Gurusar in the presence of the family members is also improbable. Counsel submits that thereafter the prosecutrix has alleged that forcible physical relationship was established with her at number of places which would show that at the most

if at all there is an iota of truth in the same, the relationship between the petitioner and the prosecutrix would be consensual and in such a situation the offence under Section 376 I.P.C would not be attracted. Counsel submits that admittedly the first occurrence took place in the month of April, 2017, whereas the present FIR was lodged on 31.7.2021 i.e. after a gap of about 4 years. Counsel submits that the motive behind registering this FIR as alleged by the prosecutrix is that the petitioner and his mother refused to keep her with them. Counsel has further drawn the attention of this Court to the MLR of the prosecutrix which shows that human semen was not detected. It is further submitted that prosecutrix has already been examined before the Trial Court and even from that angle there cannot be any threat on the part of the petitioner in influencing the prosecutrix during the trial. Counsel submits that petitioner is innocent and deserves to be enlarged on bail.

On the other hand, learned State counsel has opposed the submissions made by counsel for the petitioner. She submits that there are specific allegations of rape against the petitioner since April, 2017. It is also submitted that in her statement recorded under Section 164 Cr.P.C prosecutrix supported the case of the prosecution and now before the Trial Court also she has supported the case of the prosecution. State counsel acknowledges that the prosecutrix is more than 50 years of age and that she has already been examined before the Trial Court.

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

The occurrence in question allegedly took place for the first time in April, 2017 and thereafter it continued at various places. The

petitioner is an unmarried boy of 27 years of age, whereas the prosecutrix is more than 50 years of age. Admittedly, prosecutrix has already been examined before the Trial Court. The veracity of the allegations would be evaluated by the Trial Court on appreciation of the complete evidence to be led during the trial. However, this Court would refrain itself from commenting anything on merits of the case. In the overall facts and circumstances of the case, this Court finds that counsel for petitioner succeeds in making out a case for grant of bail to the petitioner.

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

03.03.2022

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