

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

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**CRM-M-57820 of 2022 (O&M)
Date of decision: 15.12.2022**

Rameshar @ Gullu @ Rameshvar

..Petitioner

Vs.

State of Haryana

..Respondent

CORAM: HON'BLE MR. JUSTICE VIVEK PURI

Present: Ms. Rosi, Advocate for the petitioner.

Mr. Dhruv Sihag, AAG, Haryana.

VIVEK PURI, J.(ORAL)

The petitioner is seeking regular bail in case bearing FIR No.437 dated 31.12.2021 under Sections 346 IPC (later added 365, 328, 376 and 34 of IPC) and later deleted Section 346 of IPC), registered at Police Station Punhana, District Nuh.

Custody certificate has been taken on record.

Briefly, the FIR has been registered on the basis of the statement made to the police by the father of prosecutrix alleging that his daughter i.e. prosecutrix went missing from the house on 30.11.2021. It was suspected that she has been abducted by the petitioner and his family members.

Learned counsel for the petitioner contends that the prosecutrix has been recovered on 18.01.2022 and in her statement under Section 161 Cr.P.C. she has not attributed allegations with regard to the commission of forcible sexual inter-course against the petitioner. Moreover, during the course of trial,

the statement of prosecutrix who is aged about 33 years has been recorded. She has specifically and categorically stated that the physical relations were developed with the petitioner of her own free will and without any pressure. She has denied the allegations with regard to the kidnapping and commission of rape attributed against the petitioner. The petitioner is in custody for a period of 10 months and 23 days and is not involved in any other case.

Learned State counsel has opposed the bail application on the score that the statement of the prosecutrix was recorded under Section 164 Cr.P.C. wherein she had leveled categorically allegations of forcible sexual inter-course against the petitioner. Even the prosecutrix was recovered from the custody of the petitioner. The prosecutrix was found to be pregnant and has suffered abortion and fetus has been sent for DNA analysis and the report has not been received. Furthermore, at the earlier instance, the bail application of the petitioner has been dismissed by this Court by passing a speaking order dated 31.08.2022 in CRM-M-27608 of 2022.

It is significant to note that at the earlier instance the bail application of the petitioner was dismissed on the score that the report of DNA analysis on the fetus had not received and statement of the prosecutrix was yet to be recorded in the trial Court. Significantly the statement of the prosecutrix has been subsequently recorded in the trial Court and has specifically and categorically stated that she had accompanied the petitioner with her own free will and resided with him. The petitioner never committed rape upon him and the physical relations were developed with the petitioner at her own will and without any pressure. In such circumstances, even the

receipt of the report of the DNA analysis may not be of much significance. The recording of the statement of the prosecutrix at a subsequent stage and not supporting the prosecution version makes out sufficient change of circumstances to justify the extending the concession of regular bail to the petitioner. It has pointed out that so far 13 out of 26 witnesses have been examined. As such the conclusion of trial may also take some 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.

(VIVEK PURI)
JUDGE

December 15, 2022
Poonam Sharma

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No