

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

CRM-M-2630-2022 (O&M)

Date of Decision: 07.07.2023

SARIF KHAN

... PETITIONER

V/S

STATE OF PUNJAB

... RESPONDENT

CORAM: HON'BLE MR. JUSTICE VIVEK PURI

Present: Mr. Ritesh Pandey, Advocate for the petitioner.

Ms. Ruchika Sabherwal, DAG Punjab.

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VIVEK PURI, J. (ORAL)

CRM-27597-2023

1. This is an application for placing on record the copy of the statement of the prosecutrix and the Investigating Officer as Annexures P-3 and P-4, respectively.
2. By recording no objection from the State counsel, Annexures P-3 and P-4 are allowed to be taken on record.
3. Registry is directed to tag the same at the appropriate place.
4. Disposed of.

Main case

5. The petitioner is seeking regular bail in case bearing FIR No. 130 dated 11.10.2021 under Sections 376, 500, 509 IPC and Section 66E and 67 of IT Act, registered at Police Station Naya Gaon, District SAS Nagar.
6. Custody certificate has been taken on record.

7. Briefly, the FIR has been registered on the basis of the statement of the prosecutrix alleging that she is aged about 20 years. Her marriage was solemnized with Ram Kishor and a son has been born from the wedlock. The matrimonial dispute had cropped up with her husband and she started residing in her parental house. The prosecutrix developed relationship with the petitioner which continued for a period of more than 2-1/2 years. The petitioner had taken photographs and had been threatening to make the same viral and developing physical relations.

8. Learned counsel for the petitioner contends that the relationship between the petitioner and the prosecutrix was purely consensual. The prosecutrix was aged about 20 years at the time of occurrence. Even there is categorical mention in the FIR that the prosecutrix along with the child had been accompanying the petitioner to various places and photographs were also being taken. She has further asserted that the petitioner had refused to solemnize marriage with the prosecutrix as her earlier marriage was not dissolved. The statement of the prosecutrix during the course of trial has also been recorded. The petitioner is in custody for a period of 1 year, 8 months and not involved in any other case.

9. Learned State counsel has not sought to dispute the aforesaid factual aspect but has sought to oppose the bail application on the score that the petitioner had developed physical relations with the prosecutrix on the false pretext of solemnizing marriage. Moreover, out of 15 only 2 witnesses have been examined.

10. The controversy as to whether the relationship between the petitioner and the prosecutrix was consensual or not will be a debatable and moot point during the course of trial. The prosecutrix was aged about 20

years at the time of occurrence. Admittedly, her earlier marriage was subsisting which may have prevented the petitioner from solemnizing marriage with her. Moreover, the statement of the prosecutrix during the course of trial has been recorded. As such, it cannot be said that the petitioner can, in any manner, win over or influence her. The petitioner is in custody for a period of 1 year, 8 months and 4 days and still 13 witnesses still remain to be examined. 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.

11. 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.

12. The petition is allowed.

07.07.2023

Janki

**(VIVEK PURI)
JUDGE**

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