

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

214

CRM-M-16880-2022

Date of Decision: 19.04.2023

Shiva

...Petitioner

Versus

State of U.T., Chandigarh

...Respondent

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Dr. Anand Kumar Bishnoi, Advocate for the petitioner

Mr. Ankur Bali, Addl. P.P., U.T., Chandigarh
(assisted by ASI Vijay Kumar)

JAGMOHAN BANSAL, J. (ORAL)

1. The petitioner through instant petition under Section 439 Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') is seeking concession of regular bail in FIR No.90 dated 31.07.2021 under Sections 376 & 506 of Indian Penal Code, 1860 (for short 'IPC') [Section 376(2)(n) & 376(3) IPC deleted and Section 6 of Protection of Children from Sexual Offences Act, 2012 (for short 'POCSO Act') deleted later on)registered at Police Station Mauli Jagran, U.T., Chandigarh.

2. The case of the prosecution is that victim lodged a complaint alleging that she is working in a private factory in Abheypur, Panchkula, Haryana. The petitioner is also working at the same place. In March' 2020, the petitioner took her away to jungle and developed forcible relations with her. He, several times, developed physical relations with her and she got pregnant.

The victim disclosed herself minor whereas during investigation it was found that she is major accordingly, Section 6 of POCSO Act was deleted from the FIR.

3. Learned counsel for the petitioner, *inter alia* contends that petitioner belongs to Hindu community whereas prosecutrix belongs to Muslim community. Both were in love and wanted to solemnize marriage, however, on account of different religion, marriage could not be performed. Both were major and physical relations were developed with mutual consent which is evident from the fact that it is not a case that once physical relations were made whereas multiple times they made physical relations and prosecutrix lodged FIR in July' 2021 whereas first time relations were made in March' 2020. There is possibility of solemnizing marriage between petitioner and prosecutrix which would be possible only if petitioner is released on bail. The petitioner is in custody since 01.08.2021 and he is not involved in any other offence. The petitioner has been wrongly implicated in the commission of alleged offence. There is no possibility of flee from justice.

4. Custody certificate dated 10.04.2023 is taken on record. As per custody certificate, the petitioner is in custody since 01.08.2021 and in is not involved in any other crime.

5. Learned State Counsel submits that police report has already been filed and charges stand framed. He further submits that most of the

witnesses stand examined. The petitioner is involved in the commission of grave offence, thus, no leniency is warranted and release of petitioner would hamper the trial.

6. In the case in hand, the petitioner and prosecutrix at the time of commission of alleged offence were major. They have developed physical relations on couple of occasions. The first time physical relations were made in March' 2020 and FIR came to be registered in July 2021. The question of 'consent' as contemplated under Section 90 of IPC read with Section 375 IPC yet has to be adjudicated by the Trial Court. The petitioner is in custody since 01.08.2021 and is he not involved in any other crime. The material witness i.e. prosecutrix stands examined. As prosecution has right to arrest, investigate the matter and restrain an accused from manipulating or winning over witnesses, similarly accused in view of Article 21 of the Constitution of India has right to defend himself and put forth his stand which cannot be possible while in custody. The prosecution has not led any convincing/plausible documentary or oral evidence indicating possibility of petitioner being flee from justice or tampering the evidences or winning over/threatening the witnesses.

7. In view of afore-stated facts and circumstances and keeping in view judgments of Hon'ble Supreme Court in ***Uday Versus State of Karnataka, (2003) 4 SCC 46; Deelip Singh alias Dilip Kumar Versus State of Bihar, (2005) 1 SCC 88; Deepak Gulati Versus State of***

Haryana, (2013) 7 SCC 675; Dr. Dhruvaram Murlidhar Sonar Versus State of Maharashtra and Others, (2019) 18 SCC 191 and Naim Ahamed Versus State, (2023) Live Law (SC) 66, this Court is of the considered opinion that present petition deserves to be allowed and accordingly allowed. The petitioner is ordered to be released on bail subject to conditions as may be imposed by Trial Court/Illaq/Duty Magistrate concerned.

8. Nothing observed hereinabove shall be construed as expression of opinion of this Court on merits of the case and Trial Court shall proceed without being prejudiced by observations of this Court.

(JAGMOHAN BANSAL)
JUDGE

19.04.2023
Mohit Kumar

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>