

214

2023 : PHHC : 147150

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-34672-2023 (O&M)

Date of Decision: 20.11.2023

SANDEEP SINGH

... PETITIONER

V/S

STATE OF PUNJAB

... RESPONDENT

CORAM: HON'BLE MR. JUSTICE VIVEK PURI

Present: Mr. Harmanpreet Sehgal, Advocate for the petitioner.

Mr. Hittan Nehra, Addl. A.G. Punjab.

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VIVEK PURI, J. (ORAL)

1. Petitioner is seeking regular bail in case bearing FIR No. 72 dated 22.09.2022 under Sections 376, 120-B IPC registered at Police Station Lakhewali, District Sri Muktsar Sahib.

2. Custody certificate has been taken on record.

3. Learned counsel for the petitioner contends that the prosecutrix was aged about 30 years at the time of registration of the FIR. She was earlier married with one Mukesh Kumar and a son and a daughter who are presently aged about 12 and 4 years respectively were born from the wedlock. The petitioner had been residing in Kuwait. The prosecutrix also visited Kuwait and they developed relationship with each other. The FIR was lodged on the allegations that the petitioner had developed sexual relationship with the prosecutrix on the false pretext of marriage. During the course of trial, the statement of the prosecutrix has been recorded. She

has categorically and specifically stated that her earlier marriage has been dissolved and thereafter, she has solemnized marriage with the petitioner. It is also emerging in her statement that before performing the marriage, the petitioner neither developed any physical relations with her nor took her anywhere against her consent and the petitioner has not committed rape upon her. The petitioner is in custody for a period of 5 months and 4 days and not involved in any other case.

4. Learned State counsel has opposed the bail application on the score that the prosecutrix has imputed allegations against the petitioner in her statement under Section 164 Cr.P.C. and the report of FSL has not been received. Furthermore, the marriage of the prosecutrix has not been dissolved by a decree of divorce but by means of a Panchayati divorce and as such, it cannot be said that her earlier marriage is not subsisting.

5. Be that as it may, the controversy as to whether the earlier marriage of the prosecutrix was subsisting or not and if subsisting, the effect thereof, if any, is to be looked into during the course of trial. The prosecutrix is aged more than 30 years. As per her version, her earlier marriage has been dissolved and thereafter, she has solemnized marriage with the petitioner. It has been specifically and categorically stated during the course of trial that the petitioner has not developed physical relations with her prior to the marriage. The relationship, if any, between the petitioner and the prosecutrix appears to be consensual. The petitioner is in custody for a period of 5 months and 4 days and not involved in any other case. Out of 25, only 1 witness has been examined. The conclusion of trial is likely to take some time and no fruitful purpose would be served by detaining the petitioner in further custody.

6. 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.

7. The petition is allowed.

20.11.2023

Janki

**(VIVEK PURI)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No