

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

2023:PHHC:043103

(213)

CRM-M-40053-2022

Date of Decision: 23.03.2023

Mukesh

--Petitioner

Versus

State of Haryana

--Respondent

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

Present:- Mr. Parminder Singh, Advocate for the petitioner.

Mr. B.S. Virk, DAG, Haryana.

RAJESH BHARDWAJ.J (Oral)

This is the second petition filed under Section 439 Cr.P.C seeking the benefit of regular bail to the petitioner in case FIR No.161 dated 16.9.2021 under sections 376, 377, 500, 509, 506, 34 I.P.C, registered at Police Station, Women, Karnal. The earlier petition i.e. CRM-M-4173-2022 was allowed to be withdrawn by this court vide order dated 20.2.2022.

As per factual matrix, a complaint was lodged by the prosecutrix herself (name concealed), wherein it was alleged that she came in contact with the petitioner in the year 2017 through Face Book. The family of the prosecutrix was running in crisis as her husband suffered a heart attack and during that time she met the petitioner, who promised her to help in the crisis. Her husband used to ply a taxi. The petitioner won confidence of the prosecutrix and her husband. He advised her husband to go to Chandigarh as he would earn sufficiently there. After the husband of the prosecutrix went to Chandigarh petitioner started exploiting the prosecutrix along with his wife. Petitioner and his wife requested the prosecutrix to become surrogate mother as they did not have any child. The

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prosecutrix refused for the same, however, the petitioner and his wife took her to one doctor and thereafter taking disadvantage of the medical treatment she was subjected to sexual abuse by the petitioner. Her objectionable photographs were taken and thereafter both of them started blackmailing her. She was threatened that in case she does not succumb to their demands, her photographs would be made viral on social media. Husband of the prosecutrix also came to know about the behaviour of the petitioner and their relationship also went in trouble. Having no other option the prosecutrix approached the police by lodging a complaint with a request to take legal action against the culprits.

On the basis of the complaint, present FIR was lodged and investigation commenced. After completion of investigation the allegations against the wife of the petitioner were found to be false and the challan was presented only against the petitioner. Petitioner was arrested on 18.9.2021. He approached learned Fast Track Court, Karnal for grant of bail, however, after hearing the parties, the same was declined vide order dated 25.8.2022. Aggrieved by the same petitioner has approached this court for grant of bail.

Learned counsel for the petitioner vehemently contends that petitioner has been falsely implicated in the present case. It is submitted that from the bare perusal of the allegations made in the FIR it is apparent that the petitioner and the prosecutrix are of the age of majority. He submits that the relationship between the petitioner and the prosecutrix was totally consensual. He further submits that wife of the petitioner also lodged a complaint against the prosecutrix wherein she alleged about the illicit relationship of the prosecutrix with her husband due to which her matrimonial life ran into trouble and prayed for taking action against the

prosecutrix. Counsel submits that the present FIR is totally an after thought as the prosecutrix wanted to blackmail the petitioner clandestinely. Counsel submits that as the relationship between the petitioner and prosecutrix was consensual thus no offence under sections 376, 377 IPC is made out. It is submitted that after framing of charges case is fixed before the Trial Court for examination of prosecution witnesses. He submits that Trial Court has been issuing summons for recording evidence of the prosecutrix and despite having been granted about 11 opportunities prosecutrix is not appearing before the Trial Court for her examination. It is submitted that from the conduct of the prosecutrix it is evident that she is intentionally prolonging the trial only in order to prolong the incarceration of the petitioner. It is submitted that petitioner has no criminal antecedents and in the overall facts and circumstances of the case, he deserves to be enlarged on bail.

On the other hand, learned State counsel has submitted that there are specific allegations against the petitioner. He submits that the prosecutrix had been blackmailed by the petitioner by clicking her photographs, however, he submits that after framing of charges the summons are being sent repeatedly by the Trial Court to secure presence of the prosecutrix but till date she has not appeared before the Trial Court for her examination. He submits that as per instructions provided to him petitioner has no criminal antecedents.

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

Admittedly, petitioner is behind bars since 18.9.2021. It is also admitted position that both petitioner and prosecutrix are married and of the age of majority. Whether the relationship between the petitioner and

prosecutrix was consensual or not would be the subject matter of trial to be determined on the basis of the evidence led by both the sides. As submitted before this court despite various opportunities having been granted prosecutrix is not appearing before the Trial Court for her examination. There is no denial to the fact that every accused has a right of speedy trial and the trial cannot be allowed to be prolonged without any justifiable reason. In the facts and circumstances of the case, counsel for petitioner has succeeded in making out a case for grant of bail.

This court would refrain itself from commenting on the merits of the case, as the allegations and counter allegations would be assessed only after evaluation of the complete evidence led by both the sides before the Trial Court. The trial would take sufficiently long time in its conclusion.

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

23.03.2023
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Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No