

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

208

CRM-M-44715-2022

Date of Decision: 14.03.2023

Shamsher

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Mr. Namit Khurana Advocate for the petitioner

Ms. Dimple Jain, AAG, Haryana

Mr. Diwan S. Adlakha, Advocate for the complainant

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 regular bail in FIR No.119 dated 23.05.2022 under Sections 376(2)(n), 323, 506 & 120-B of Indian Penal Code, 1860 (for short 'IPC') registered at Women Police Station, Yamuna Nagar, District Yamuna Nagar.

2. The case of the prosecution is that prosecutrix made a complaint to police authorities alleging that her marriage was solemnized with Sadik son of Shamsher on 24.03.2004 according to Muslim rites and Ceremonies. She was having two children out of the said wedlock. After 3-4 months of birth of younger son, the father-in-law committed rape upon her. When she narrated the incident to her mother-in-law, she gave severe beatings to her and instigated her husband also to beat her.

She further averred that her father-in-law committed rape upon her

which was in the knowledge of her mother-in-law and her husband, however, they did not take corrective steps. On 16.05.2022, her husband left for his work and her father-in-law committed rape upon her. On 17.05.2022, he again repeated the same act. On 19.05.2022, while he was attempting to enter her room, she pushed him and ran away.

3. Learned counsel for the petitioner, *inter alia* contends that as per FIR, the petitioner attempted to commit rape upon the prosecutrix on 19.05.2022 and on the same day, she was medically examined. In the column of gist of incident, it is mentioned that patient has alleged that her husband on 19.05.2022 at around 08:00 AM has committed offence of domestic violence. The prosecutrix, at the time of medical examination on 19.05.2022, made allegations against her husband whereas in her medical examination on 24.05.2022 i.e. just 5 days later, she made allegations against the petitioner that he has committed rape upon her on different dates including an attempt on 19.05.2022. The prosecutrix in her cross-examination has stated that her parents-in-law are staying separate from her. It is a case of matrimonial discord between husband-wife whereas petitioner being father-in-law has been wrongly implicated. There is no medical evidence of commission of rape by the petitioner. He is a 70 years old man and he is in custody since 28.06.2022. The petitioner is not involved in any other offence. The petitioner has been wrongly implicated in the commission of alleged offence. The petitioner is a permanent resident of District Yamuna Nagar. The petitioner has deep roots in the society. There is no possibility of flee from justice.

4. Custody certificate dated 13.03.2023 is taken on record. Registry is directed to tag the same at appropriate place.

5. Learned counsel for the complainant submits that there are specific allegations against the petitioner and he is medically fit to commit the alleged offence, thus, age of the petitioner need not to be considered. The petitioner has committed heinous crime of rape upon his daughter-in-law, thus, he does not deserve to be granted concession of regular bail.

6. Learned State Counsel submits that police report has already been filed and charges stand framed. She further submits that out of 15 witnesses, 5 have already been examined which includes the prosecutrix. The petitioner is involved in the commission of grave offence, thus, no leniency is warranted and release of petitioner would hamper the trial.

7. In the case in hand, there is no medical evidence of commission of rape by the petitioner. The prosecutrix in her cross-examination has stated that her parents-in-law are staying in a separate accommodation. The prosecutrix had alleged that last attempt to commit rape was made by the petitioner on 19.05.2022 and on the same day, she was medically examined where she did not make any allegation against the petitioner whereas specific allegations were made against her husband. The petitioner is a 70 years old man and prosecutrix stands examined, thus there is no possibility of winning over of key witness or tampering of evidence. The petitioner is in custody since 29.06.2022.

There are 15 prosecution witnesses and till date only 5 have been

examined, thus, there is abysmally low possibility of conclusion of trial in near future. 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;

8. In view of afore-stated facts and circumstances, this Court is of the considered opinion that present petition deserves to 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.

9. 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

14.03.2023
Mohit Kumar

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