291 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-49119-2022
Date of decision : 09.03.2023

Sukhpal Singh .....Petitioner

versus

State of Haryana ..... Respondent

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

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Present :- Mr. Siddarth Tanwar, Advocate
for the petitioner.

Mr. Kirpal Singh Thakur, AAG, Haryana.

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RAJESH BHARDWAJ, J. (Oral)

This is the second petition for grant of regular bail to the petitioner in case FIR No.204 dated 13.07.2020, under Sections 376-D, 342, 366, 354, 506 of IPC, registered at Police Station Ellenabad, District Sirsa.

Adumbrated facts of the case are that the complaint was lodged by the prosecutrix wherein it was alleged that she was 20 years of age and does household work. About a year back, Sonu came to his mama's house and they met each other. Both of them fell in love with each other and decided to marry. On 10.07.2020, Sonu told her that they would run away from the home and would perform marriage in the morning in the Court. At about 12:00 in the night, Sonu and Sukhpal Singh (petitioner) came to her house on motorcycle and by alluring her, took her on motorcycle to a tubewell room in the field where Sonu did wrong act with her whereas, Sukhpal guarded the place while standing outside. Thereafter, Sonu told her that he had enjoyed with her and would

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not perform marriage with her and she was threatened to be killed in case she disclosed anything about the same. On the basis of the complaint, formal FIR was lodged and investigation commenced. On 14.07.2020, statement of the prosecutrix was recorded under Section 164 Cr.P.C. by learned Magistrate wherein she reiterated her allegations made in the FIR. On completion of the investigation, petitioner was arrested on 25.08.2020. He approached the Court of learned Additional Sessions Judge, Fast Track Special Court, Sirsa praying for grant of bail. However, after hearing counsel for both the sides, learned Additional Sessions Judge, Fast Track Special Court declined the same vide order dated 04.03.2022. Aggrieved by the same, petitioner approached this Court on earlier occasion by way of filing CRM-M-18856-2021 which was allowed to be withdrawn vide order dated 17.02.2022 and hence, the petitioner approached this Court again by way of this second present petition.

Learned counsel for the petitioner has vehemently contended that the petitioner has been falsely implicated in this case. He has submitted that from the case of the prosecution, it is apparent that both the accused and the prosecutrix are of the age of majority. He has submitted that the prosecutrix herself has admitted that she fell in love with co-accused Sonu and they decided to marry. It is submitted that the only allegation levelled against the petitioner was that he guarded tubewell when co-accused Sonu performed sexual intercourse with the prosecutrix. He has submitted that once the prosecutrix is herself major and has fallen in love with co-accused, offence under Section 376 IPC would not be attracted as the relationship between the prosecutrix and co-accused Sonu was the consensual one. He submits that the petitioner

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has been implicated only being cousin of co-accused Sonu. He further submits that after completion of investigation, learned trial Court has commenced with the examination of the prosecution witnesses and thus, prosecutrix already stands examined. He submits that though the prosecutrix has supported the case of the prosecution, however, as the material witnesses already stand examined, petitioner is not in a position to tamper with the prosecution evidence. He further submits that though the petitioner was implicated in another case as well, however, he has been acquitted by the trial Court in the same. He submits that in the facts and circumstances of the case, petitioner deserves to be granted regular bail.

Learned State counsel, on the other hand, has opposed the submissions made by counsel for the petitioner. He has submitted that there are specific allegations against the petitioner made by the prosecutrix. He has submitted that as per the case of the prosecution, petitioner was guarding the place of occurrence and thus, he is equally liable for the offence under Section 376-D of IPC. He submits that the petitioner was prosecuted in another FIR pertaining to offence under section 354 IPC. However, he has been acquitted by learned trial Court in that case. He further submits that out of 17 prosecution witnesses, 05 witnesses already stand examined including the prosecutrix.

I have heard counsel for the parties and perused the record. Evidently, both the accused and the prosecutrix are of the age of majority. It is the case of prosecution that the prosecutrix and co-accused Sonu had fallen in love and decided to marry each other. It is further the case of prosecution that the co-accused performed sexual intercourse with

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prosecutrix by giving her promise of marriage. Whether in the facts and circumstances, offence under section 376-D IPC is attracted or not would lie in the domain of the trial Court to be assessed on appreciation of the evidences to be led before it. The allegations against the petitioner are that he is cousin of co-accused Sonu and was guarding the place of occurrence. Out of 17 prosecutrix witnesses, 05 witnesses including the prosecutrix already stand examined and thus, the petitioner is not in a position to tamper with the evidence of the prosecution.

The veracity of the allegations would be assessed only after the conclusion of the trial and on the appreciation of evidence to be led by both the parties before the trial Court. This Court would refrain itself from commenting anything on the merits of the case. The trial of the case will take sufficiently long time. Keeping in view the arguments raised by both the sides and perusing the record, this Court is of the opinion that learned counsel for the petitioner succeeds in making out a case for grant of regular bail. Accordingly, the present petition is allowed and the petitioner is ordered to be released on bail on his furnishing bail/surety bonds to the satisfaction of the concerned trial Court/Duty Magistrate. Nothing said herein shall be treated as an expression of opinion on the merits of the case.

(RAJESH BHARDWAJ)
JUDGE

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m. sharma

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

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