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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-55474-2023

Date of decision: 21st December, 2023

Deepak Sharma

...Petitioner(s)

Versus

State of Haryana and another

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Vikas Kumar, Advocate for the petitioner.
Ms. Nidhi Garg, AAG, Haryana.
Mr. Chandan Kumar, Advocate for respondent No.2.

MANISHA BATRA, J (ORAL):-

The present petition has been filed under Section 439 of Cr.P.C.
seeking regular bail in FIR mentioned below:-

FIR No.	Dated	Police Station	Sections
262	27.6.2023	N.I.T., Faridabad, District Faridabad	376(2)(n), 506 and 34 of the Indian Penal Code, 1860 (for short ‘the Act’)

2. Brief facts relevant for the purpose of disposal of this case are that the aforementioned FIR was registered on the basis of the statement recorded by the prosecutrix (name withheld) on the allegations that she was residing separately from her husband from the last one and half year due to some matrimonial discord. She was twenty eight years old with two daughters. In March, 2022, she had been employed as a receptionist in the Hotel of Nikhil Sharma brother of the present petitioner. During the night time, the petitioner used to look after the management of the hotel. They had

come into contact with each other and gradually had fallen into love. The petitioner by alluring her on the pretext of performing marriage, committed rape upon her in the month of April, 2022 in the hotel premises. Thereafter, he repeatedly ravished her while avoiding the question of performing marriage with her. On 05.12.2022, he bluntly refused to get married with her. Feeling depressed, the complainant even thought of ending her life by consuming *harpic* (toilet cleaner) on 07.12.2022. She was got admitted in the hospital by the petitioner, who proposed to enter into a compromise with her. Her medical condition had deteriorated further and on 08.01.2023, the petitioner got her admitted at Vedanta Hospital, Faridabad where surgery was performed upon her. Thereafter, he started maintaining distance from her and when tried to be contacted on phone, he extended threat to kill her. Even his brother Nikhil Sharma extended threats to her, if she tried to harass his family members. Investigation proceedings were initiated on the basis of allegations levelled in the FIR. Investigation since has been completed and challan has been presented in the Court.

3. It is argued by learned counsel for the petitioner that infact it was a case of consensual relationship since the petitioner as well as respondent No.2 were already married and there marriages were subsisting. Therefore, there was no question of his giving any allurement to respondent No.2 to solemnize marriage with her and her having any misconception that he would perform marriage with her. Respondent No.2 is habitual of lodging false complaints of her being subjected to rape and previously also she had filed a complaint against one-Sonu friend of her husband. Both the parties are major. There are no allegations that physical relations were induced on

account of any extraneous consideration and the allegations *per se* do not attract the provisions of Section 376 of IPC. Investigation has since been completed. There is no medical evidence to substantiate the plea of rape. FIR was lodged about the incident allegedly having taken place in March, 2022 after a delay of one year and two months. He was in custody since 02.07.2023. Trial is yet to commence and is likely to take time. No useful purpose would be served by keeping him in custody on the basis of false allegations. Hence, it is argued that the petitioner deserves to be given concession of bail.

4. Mr. Chandan Kumar, Advocate has put in appearance on behalf of the respondent No.2 and filed his *Vakalatnama*.

5. The bail application has been resisted by learned State counsel in terms of status report filed by respondent No.1 today. Learned State counsel assisted by learned counsel for respondent No.2 has argued that there are serious allegations against the petitioner and there is likelihood of his misusing the concession of bail by intimidating the complainant and other material witnesses, if released on bail. Therefore, he has argued that the petition does not deserve to be allowed.

6. The petitioner is alleged to have induced/allured respondent No.2 to have sexual relations with him on the pretext of performing marriage with her as per the allegations levelled in the FIR. A bare perusal of the contents of the FIR however, reflects that the marriage of respondent No.2 was admittedly subsisting and she was not divorced, when she entered into relationship with the present petitioner which was admittedly consensual in nature. She is having two children. Even the petitioner is married. Both the

parties being married, it is debatable that the acknowledged consensual physical relationship constituted the offence under Section 376 of IPC. Reference in this context can be made to *S. Khushboo Vs. Kanniammal, (2010) 5 SCC 600* wherein the Hon'ble Supreme Court observed that no offence is committed if two adults are willingly engaged in sexual relation without there being a marital setting; order dated 14.07.2022 in *Criminal Appeal No. 962 of 2022* arising out of *SLP (Crl.) No. 5326-2022* titled as '*Ansaar Mohammad Vs. The State of Rajasthan and another*' wherein the complainant and the accused were in relationship for a period of four years. It was held by Hon'ble Supreme Court that if the relationship was not working out subsequently, the same could not be ground for lodging an FIR for the offence under Section 376(2)(n) of IPC and the benefit of pre-arrest bail was given and *Prashant Bharti Vs. State of NCT Delhi (2013) 9 SCC 293*, wherein the complainant was validly married to her previous husband. The assertion made by her that she was induced to physical relationship by the accused on the basis of promise to marry her, was disbelieved.

7. There are no allegations in the FIR that the complainant was kept as a wife by the petitioner. She being major is presumed to be clearly aware of the fact that during the subsistence of her marriage, she was entering into another relationship and as such no question of her being induced by any other person into physical relationship under the assurance of marriage, arises and this plea *prima facie* cannot be accepted as it can be stated to be an adulterous relationship entered into by the respondent No.2 while knowing its legal implications.

7. In view of the discussion as made above, taking an overall view

of the nature of the allegations levelled against the petitioner and the implication thereof, the delay in lodging of the FIR and the attendant facts and circumstances as well as the position of law, I am of the considered opinion that it is fit case for extending benefit of regular bail to the petitioner. Therefore, the petition is allowed, the petitioner is ordered to be released on bail subject to his furnishing bail bonds to the satisfaction of the Chief Judicial Magistrate/ Duty Magistrate concerned.

8. It is clarified that observations made hereinabove shall not be construed as an expression of opinion on the merits of the case.

9. Since the main case has been disposed of, pending application if any is rendered infructuous.

[MANISHA BATRA]
JUDGE

21st December, 2023
Parveen Sharma

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| 1. Whether speaking/ reasoned | : | Yes / No |
| 2. Whether reportable | : | Yes / No |