

CRM-M-5577-2024
Date of decision: 24th April, 2024

...Petitioner(s)

Versus

...Respondent(s)

Present: Mr. Balraj Gujjar, Advocate for the petitioner.

Mr. Neeraj Poswal, AAG, Haryana.

Mr. S.S. Verma, Advocate for respondent No.2.

MANISHA BATRA, J (ORAL):-

The petitioner is seeking concession of pre-arrest bail in case arising out of FIR No. 663, dated 13.12.2023 registered under Sections 498A, 376, 354 and 506 read with Section 34 of Indian Penal Code, 1860 (Sections 450 and 376(2)(n) of IPC and Section 6 of POCSO Act added later on) at Police Station Tosham, District Bhiwani on the basis of complaint filed by the prosecutrix 'X' (name withheld) levelling allegations of the petitioner having molested her while she was studying in 10th Class in the year 2018, having committed rape upon her on 03.06.2018 and further alleging that while she was studying in an institute and had been staying in hostel in November, 2021, the petitioner had forced to meet her and

thereafter, also, she was being subjected to rape by him several times. Allegations were further levelled that he had forcibly performed marriage with her on 09.11.2021 on gun point but instead of taking her to his house had left her at the hostel. She had become pregnant. She also alleged that the petitioner used to keep a vigil on her activities through her friend 'R' (name withheld) and on asking, the said 'R' had also disclosed that she had been extended threats to face dire consequences by the petitioner, if she did not give the required information to the petitioner. She alleged that one day, she was taken to the parental house of the petitioner for the purpose of taking divorce. She was physically assaulted by the petitioner and his family members and suffered miscarriage due to that reason. Accordingly, prayer had been made by her for taking penal action against the petitioner. The investigation is under way.

3. Vide order dated 02.02.2024, the petitioner had been directed to join investigation and as per the status report submitted on 12.04.2024, he has joined the same on 04.04.2024.

4. Learned counsel for the petitioner has argued that the petitioner has joined the investigation. His custodial interrogation was not required. Infact, it was a case of love affair between the petitioner and the prosecutrix and she had voluntarily performed marriage with him on 09.11.2021. She was major. It is submitted that it was the father of the prosecutrix who was dead against their matrimonial alliance and hatched a conspiracy against the petitioner. As per her own statement as recorded on 20.04.2023, she had suffered a miscarriage as she was taking medicines for pain in her spinal

cord and had started bleeding. It is argued that infact, the father of the prosecutrix had called the petitioner and herself at Tosham on 06.03.2023, wherein by forming membership of an unlawful assembly with 6-7 more persons and by brutally attacking and causing injuries to the petitioner, he had forcibly taken away the prosecutrix with him and then she was compelled to lodge a case against the petitioner, after a gap of more than nine months from 06.03.2023. Offences under Sections 354, 376(2) (n) and 34 of IPC and Section 6 of POCSO Act have since been deleted. It is also argued that the allegations as levelled in the FIR are false on the face of the record as the prosecutrix had never levelled any allegation of her being ravished by the petitioner from the year 2018 till the date of registration of FIR in this case. With these broad submissions, it is urged that the petitioner deserves to be given concession of pre-arrest bail.

5. Status report has been filed by respondent-State. Learned State counsel assisted by learned counsel for respondent No.2 that there are serious allegations against the petitioner. He had been sexually exploiting the prosecutrix since the time when she was a minor and had performed marriage with her by extending threats. He along with his family members had caused miscarriage of her pregnancy. His custodial interrogation is required for thorough investigation of the matter. There are chances of his intimidating the prosecutrix or absconding, if extended benefit of pre-arrest bail. Rather he has already been extending threats to her and mis-using the concession of interim bail. Therefore, it is argued that the petition does not deserve to be allowed.

6. I have heard learned counsel for the parties at considerable length and have gone through the record carefully.

7. As per the allegations, the petitioner had been harassing the victim since the year 2018, had firstly committed rape upon her on 03.06.2018 and had also ravished her, subsequently, while she was studying in Mohali and was staying in a hostel therein. As per the allegations, he had forcibly solemnized marriage with her and she had even become pregnant but she had suffered miscarriage due to the extension of beatings by the petitioner and his family members. Whereas, according to the petitioner, the victim who was an adult female had voluntarily performed married with him, as they were in love with each other since long. She had become pregnant and as their relationship was not acceptable to her parents, therefore, she was forcibly taken away by her father along with him by physically assaulting by the petitioner on 06.03.2023.

8. Annexure P-7 is a copy of order dated 15.05.2023 shown to have been passed by the Sub Divisional Executive Magistrate (SDM), Hisar in an application filed under Section 97 of Cr.P.C. by the present petitioner and a perusal of the same reveals that the victim had recorded a statement before the abovesaid officer to the effect that she wanted to stay with her parents and not with her husband and also wanted to take divorce from him. No allegations that she had been forced to perform marriage with the petitioner had been kept confined by him or that it was he who had caused miscarriage of her pregnancy are shown to have been levelled by her in that statement. It is not in dispute that she had performed marriage with the

petitioner. The prosecutrix did not lodge any complaint against the petitioner from the year 2018 till the date of lodging of FIR in this case i.e. on 13.12.2023. As such it is a debatable question as to whether the petitioner had forcibly committed rape upon her before performing marriage with her or they were having an affair and relationship between them at that stage was consensual. The custodial interrogation of the petitioner is no more required. Though it was argued that the petitioner is extending threats to the victim but no specific instance has been quoted by her counsel. In view of the discussion as made above, taking all the circumstances into consideration but without meaning to make any comment on the merits of the case, lest the same prejudice the trial Court or the case of the parties, I am of the considered opinion that it is a fit case for exercising powers under Section 438 of Cr.P.C. and extending benefit of pre-arrest bail to the petitioner. Therefore, the petition is allowed and the order dated 26.02.2024 is made absolute subject to compliance of following conditions by the petitioner:-

- (i) He shall appear before the Investigating Officer as and when required.
- (ii) He will not make any contact with the prosecutrix or other material witnesses during the course of trial and will not visit the vicinity where the prosecutrix resides.
- (iii) He will not tamper with the evidence or intimidate the witnesses.
- (iv) He will not leave the country without permission of the trial Court.

9. In case of violation of any of the above conditions, the jurisdictional Court shall be empowered to consider the application for cancellation, if any, and pass appropriate orders in accordance with law.

[MANISHA BATRA]
JUDGE

24th April, 2024
Parveen Sharma

1. Whether speaking/ reasoned

:

Yes
2. Whether reportable

:

Yes