

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-45208-2023
Date of decision: 19th January, 2024

Harpreet Singh

...Petitioner(s)

Versus

State of Punjab

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Achin Gupta, Advocate for the petitioner.
Mr. Parneet Singh Pandher, AAG, Punjab.

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
112	08.07.2023	Baghapurana, District Moga	376 of Indian Penal Code, 1860 (for short ‘the IPC’)

2. Brief facts relevant for the purpose of disposal of this petition are that the aforementioned FIR was registered on 08.07.2023 on the basis of a written statement recorded by the prosecutrix ‘J’ (name withheld) alleging therein that she was living separately from her husband since long and divorce petition filed between them was pending at Family Court at Moga. She had met the petitioner sometime ago when she gone to attend a marriage of some relatives and thereafter, they had started having conversation with each other on phone. She alleged that on 19.10.2022, he had come to Moga

and called her on phone and persuaded her to meet him in a hotel on the pretext that he had some urgent talk. When she reached there, he forcibly subjected her to rape in a room of the hotel. She had filed a complaint against him at the concerned police station but then a compromise was entered between them. It was further alleged that sometime thereafter, the petitioner contacted her again on phone and while apologizing for his previous act he proposed to perform marriage with her and on this pretext, he came to her at Moga and even a sworn affidavit was given by him to her to take her in confidence. On being induced by the petitioner, she started residing with him at Moga and just 2-3 days thereafter, he took her to his own native place and they started living therein at some rented premises. Two months thereafter, he left the house without giving any information to her. After registration of FIR, investigation proceedings were initiated. The petitioner was arrested on 11.07.2023. After completion of necessary investigation and usual formalities, challan was presented in the Court and presently, the petitioner is facing trial for commission of offence punishable under Section 376 of the IPC.

3. The present petition has been filed by the petitioner on the grounds and it has been argued by his counsel that he has been falsely implicated in this case. The prosecutrix is a thirty-five years old mature lady. She had been residing with the petitioner as per own consent and relationship between them was purely consensual. She was married having three children and very well knew the consequences of her acts. The petitioner is a student and as he was planning go abroad, therefore, she had

started blackmailing and harassing him. The ingredients for commission of offence punishable under Section 376 of IPC, were not made out at all. He was in custody since 11.07.2023. Now in her deposition as recorded before the trial Court on 08.11.2023, she had admitted that the petitioner had not committed rape upon her and their relationship was purely consensual and also that no promise of marriage had ever been made by the petitioner. It is therefore, argued that further detention of the petitioner would not serve any useful purpose as trial is likely to take time. With these broad submissions, it is urged that petition deserves to be allowed.

4. Learned State counsel has placed a copy of the custody certificate on record and has argued that as allegations against the petitioner are serious in nature, hence, the petition does not deserve to be allowed.

5. I have heard learned counsel for the parties and have gone through the record carefully.

6. The petitioner is alleged to have committed rape upon the prosecutrix firstly on 19.10.2022 and several times thereafter. As per the allegations levelled in the FIR, he had ravished her on the pretext of performing marriage with her. Keeping in view the fact that prosecutrix has not supported the prosecution version at all while stepping into the witness box, coupled with the fact that she is a thirty-five years old and mature female who was married to someone else and is even having three children from her previous marriage and also knew that her marriage with her husband had not been dissolved by a decree of divorce and as she herself is admitted to have maintained consensual physical relationship with the

petitioner, therefore, it is highly debatable that any offence of rape had even been made out or not? With these observations, I find it to be a fit case to extend benefit of bail to the petitioner. Hence, the petition is allowed, the petitioner is ordered to be released on bail subject to his furnishing personal/surety bonds to the satisfaction of the Chief Judicial Magistrate/ Duty Magistrate concerned.

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

8. Since the main petition has been dismissed, pending application if any is rendered infructuous.

[MANISHA BATRA]
JUDGE

19th January, 2024
Parveen Sharma

1. Whether speaking/ reasoned

:

Yes / No
2. Whether reportable

:

Yes / No