

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

216

CRM-M-47753-2023 (O&M)
Date of decision: 16.05.2024

RAJESH @ RAJESH KUMAR

...Petitioner

Versus

STATE OF HARYANA

...Respondent

CORAM: HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN

Present : Mr. S.S. Brar, Advocate
for the petitioner.

HARPREET KAUR JEEWAN, J.

1. The present petition has been filed under Section 439 Cr.P.C. for grant of regular bail to the petitioner in case bearing FIR No.28 dated 06.12.2021 (Annexure P-1) under Sections 376(2)(n), 376-D, 450, 406 IPC registered at Police Station Women, Dabwali, District Sirsa.
2. Notice of motion.
3. On the asking of the Court, Mr. Kirpal Singh Thakur, AAG, Haryana accepts notice on behalf of the respondent-State.
4. Custody certificate dated 16.05.2024 has been filed on behalf of the respondent-State, which is taken on record. As per the custody certificate, the petitioner has undergone 02 years 04 months and 23 days of actual custody.
5. Reply dated 30.11.2023 by way of an affidavit of Rajiv Kumar, HPS, Deputy Superintendent of Police (Crime), Dabwali along with copy of statement under Section 164 Cr.P.C. (Annexure R-1), report of RFSL, Hissar (Annexure R-

2) and DNA report (Annexure R-3) have been filed on behalf of the respondent-State, which are taken on record.

6. As per the prosecution case, the present FIR was registered at the instance of the complainant/prosecutrix with the allegations that the petitioner along with his co-accused have committed rape upon the prosecutrix. The petitioner is alleged to have repeatedly committed rape upon the prosecutrix on the pretext of marriage.

7. Learned counsel for the petitioner *inter alia* contends that the petitioner has been falsely implicated in this case and he is in custody since 24.12.2021 as under-trial. He further contends that there was a consensual relationship between the petitioner and prosecutrix. The prosecutrix in her testimony as PW-4 (Annexure P-2) has stated that on 03.08.2021, the petitioner took the prosecutrix to his house and thereafter, she resided with him for 4 months, where he made physical relationship with the prosecutrix against her wishes on the pretext of marriage. He submits that the co-accused of the petitioner has already been granted bail vide judgment dated 04.05.2023 passed in CRM-M-28412-2022 by the Coordinate Bench of this Court. The petitioner is ready to face trial. He further submits that investigation is complete and final report under Section 173 Cr.P.C. has been presented before the trial Court. There are total 23 witnesses out of which only 5 witnesses have been examined. The trial is going to take time to conclude, as such, prayer for releasing the petitioner on bail has been made.

8. On the other hand, learned State counsel on instructions from concerned Investigating Officer has informed that investigation is complete and

final report under Section 173 Cr.P.C. has been presented before the trial Court. As per custody certificate, there is no history of other cases against the petitioner. He has informed that the statement of the prosecutrix along with 4 material witnesses has been recorded. DNA report is also against the petitioner.

9. I have considered the aforesaid contentions. Investigation is complete and the final report under Section 173 of the Code of Criminal Procedure has been presented before the trial Court. The petitioner is in custody for 02 years 04 months and 23 days. There are total 23 witnesses, out of which only 5 witnesses including the prosecutrix have been recorded, as such conclusion of the trial will take time. There is no apprehension of absconding of the petitioner. As per custody certificate, there is no history of other cases against the petitioner. The co-accused of the petitioner has already been granted bail by the Coordinate Bench of this Court.

10. In view of the above, the petition is allowed. The petitioner is ordered to be released on regular bail, subject to his furnishing adequate bail bonds and surety bonds to the satisfaction of the trial Court/Duty Magistrate concerned.

11. However, it is made clear that nothing expressed hereinabove would be construed to be an expression of opinion on merits of the case.

12. Pending miscellaneous application (s), if any, shall also stand disposed of.

(HARPREET KAUR JEEWAN)
JUDGE

16.05.2024
P.Bhatt

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