

2024:PHHC:000459

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

205

CRM-M-64233-2023

Date of decision:05.01.2024

Sandeep

...Petitioner

V/s

State of Haryana

...Respondent

CORAM: HON’BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Vimal Kumar Gupta, Advocate for the petitioner.

Ms. Priyanka Sadar, AAG Haryana

SUMEET GOEL, J.

1. Present petition has been filed under Section 439 Cr.P.C. for grant of regular bail to the petitioner in case bearing FIR No.125 dated 10.09.2023 (Annexure P-1), registered for the offences punishable under Sections 376(2) (n) and 204 IPC (added later on) at Police Station Women West, District Gurugram.

2. The case set up in the FIR in question is as follows:-

“To SHO, Police Station Gurugram. Sir, It is requested that I, Aarti Katiar daughter of Sarvesh Kumar Katiar, presently residing at House No.243/2, Feroz Gandhi Colony, Sector-9, Gurugram and is resident of Gram Bhanpur Post Godhani, District Kannauj. I am doing job in R2 Net Pvt. Ltd. Company where I met with Sandeep son of Ram Karan, presently residing at House No.93 C2, Bhawani Enclave, Sector-9. We worked together. During this, we started meeting and talking with each other. Thereafter, in November, 2018, Sandeep came to my rented House No. 54/1, Devilal Colony and establish physical relations with me on the pretext of false promise of marriage even my refused to do so. Thereafter Sandeep kept physical relations with me repeatedly. In the year 2022 Sandeep started

to live with me at House No.343/2, Feroz Gandhi Colony Near, Sector-9. Now in April, 2023 Sandeep left me and refused to marry with me. I am doing job in Infinity Broadband Pvt. Ltd. Sandeep has gone after left the job. Sandeep has made physical relation with me on the pretext of false promise of marriage and strict action should be taken against him. I shall be highly obliged to you. Sandeep, Mobile No.7428954302. Sd/- Arti Katiyar, Arti Katiyar, House No.343/2, Feroz Gandhi Colony, Gurugram, Haryana, Mobile No.838299627, 7428562840, age 29 years.”

3. Learned counsel for the petitioner has argued that the petitioner as also the prosecutrix were in a consensual relationship; the petitioner as also the prosecutrix are major in terms of age apart from being educated and the facts/circumstances of the case exhibit that there is no coercion by the accused-petitioner forcing the complainant to enter into a sexual relationship. It is further submitted that the investigation by the Police is already complete; challan was presented on 20.12.2023 and the trial is underway.

4. Learned State counsel has opposed the present petition arguing that the allegations raised are serious in nature and thus the petitioner does not deserve the concession of the regular bail.

5. I have heard counsel for the parties and have gone through the records of the case.

6. The petitioner as also the prosecutrix are stated to be in relationship since the year 2018; the petitioner is in custody since 03.11.2023, challan stands presented on 20.12.2023 wherein 14 prosecution witnesses have been cited; the prosecutrix is stated to be aged about 29 years whereas petitioner-accused is stated to be 25 years old; the petitioner as also

the prosecutrix are educated & there is no tangible material on record to reflect likelihood of the petitioner absconding from the process of justice or interfering with the prosecution evidence.

7. The Hon'ble Supreme Court in judgment titled as ***Pramod Suryabhan Pawar vs. The State of Maharashtra & anr. 2019(4) RCR (Criminal) 135***, has held as under:-

12. This Court has repeatedly held that consent with respect to Section 375 of the IPC involves a active understanding of the circumstances, actions and consequences of the proposed act. A individual who makes a reasoned choice to act after evaluating various alternative actions (c inaction) as well as the various possible consequences flowing from such action or inaction, consen to such action. In Dhruvaram Sonar which was a case involving the invoking of the jurisdictric under Section 482, this Court observed:

"15... An inference as to consent can be drawn if only based on evidence or probabilities of the case. "Consent" is also stated to be an act of reason coupled with deliberation. It denotes an active will in mind of a person to permit the doing of the act complained of."

*This understanding was also emphasised in the decision of this Court in **Kaini Rajan v. State of Kerala, 2013(4) RCR (Criminal) 365: (2013) 9 SCC 113:***

"12... "Consent", for the purpose of Section 375, requires voluntary participation not only after the exercise of intelligence based on the knowledge of the significance of the moral quality of the act but after having fully exercised the choice between resistance and asset. Whether there was consent or not, is to be ascertained only on a careful study of all relevant circumstances."

13. This understanding of consent has also been set out in Explanation 2 of Section 375 (reproduced move). section 3(1) (w) of the SC/ST Act also incorporates this concept of consent:

"3(1) (w) -

(i) intentionally touches a woman belonging to a Scheduled Caste or a Scheduled Tribe, knowing that she belongs to a Scheduled Caste or a Scheduled Tribe, when such act of touching is of a sexual nature and is without the recipient's consent;

.....

Explanation.-For the purposes of sub-clause (i), the expression "consent" means an unequivocal voluntary agreement when the person by words, gestures, or any form of non-verba communication, communicates willingness to participate in the specific act:

Provided that a woman belonging to a Scheduled Caste or a Scheduled Tribe who does not offer physical resistance to any act

*of a sexual nature is not by reason only of that fact, is be regarded as consenting to the sexual activity:
Provided further that a woman's sexual history, including with the offender shall not imp consent or mitigate the offence;”*

8. In view of totality of factual matrix of the present case, the instant petition is allowed. Petitioner is ordered to be released on regular bail on his furnishing bail/surety bonds to the satisfaction of the Ld. concerned CJM/Duty Magistrate. However, in addition to conditions that may be imposed by the concerned CJM/Duty Magistrate, the petitioner shall remain bound by the following conditions:-

- (i) The petitioner shall not mis-use the liberty granted.
- (ii) The petitioner shall not tamper with any evidence, oral or documentary, during the trial.
- (iii) The petitioner shall not absent himself on any date before the trial Court.
- (iv) The petitioner shall not commit any offence while on bail.
- (v) The petitioner shall deposit his passport, if any, with the trial Court.
- (vi) The petitioner shall give his cellphone number to the Investigating Officer/SHO of concerned Police Station and shall not change his cell-phone number without prior permission of the trial Court/Illaqa Magistrate.
- (vii) The petitioner shall not in any manner try to delay the trial.

9. In case of breach of any of the aforesaid conditions and those which may be imposed by concerned CJM/Duty Magistrate as directed hereinabove or upon showing any other sufficient cause, the State/complainant shall be at liberty to move cancellation of bail of the petitioner.

10. Ordered accordingly.

11. Nothing said hereinabove shall be construed as an expression of opinion on the merits of the case.
12. Since the main case has been decided, pending miscellaneous application, if any, shall also stands disposed off.

(SUMEET GOEL)
JUDGE

January 05, 2024
Ajay

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