

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

222

CRM-M-64313-2023
Date of Decision: 01.03.2024

VIVEKPETITIONER

Versus

STATE OF HARYANA ...RESPONDENT

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Shashi Kumar Yadav, Advocate with
Ms. Ruchi Munjal, Advocate for the petitioner.

Mr. Arjun Lakhanpal, Addl., A.G., Haryana.

MANISHA BATRA, J.(Oral)

1. 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
0121	16.09.2023	Women Police Station Faridabad, District Faridabad	323, 376 (2)(n), 506 of IPC

2. Brief facts of the case relevant for the purpose of disposal of the petition are that the aforementioned FIR was registered on the basis of written complaint filed by the prosecutrix “S”(name withheld) on 16.09.2023, alleging therein that she was a married women having two children. The petitioner is son of her maternal aunt. Both of them used to conversate with each other and had developed liking with each other They were in relationship since last about 02 years and she had started living with him since May, 2023 at Kheripool Gali No.5, Indra Complex Faridabad. She alleged that sexual relationship had also been developed between them. However, sometimes, the

petitioner used to extend beatings to her and told her to go back to her

children. She alleged that now he was threatening to kill her children and was having forcibly physical relations with her. On registration of FIR, investigation proceedings were initiated. The victim was got medically examined. The petitioner was arrested on 19.09.2023 and was also medically examined. After completion of necessity investigation and usual formalities, challan under 173 Cr.P.C was presented in the Court and presently the petitioner is facing trial of commission of offences punishable under Section 323, 326 (2)(n) and 506 of IPC. The petitioner had filed an application for grant of regular bail before the learned trial Court which was dismissed on 02.12.2023.

3. The present petition has been filed by the petitioner on the ground that he has been falsely implicated in this case. In fact, the prosecutrix is his cousin sister and is a mature lady having two children. As her relations with her husband were strained, she had developed intimacy with him and an affair started between them and petitioner had fallen love with her. He had agreed to live with her in a separate accommodation since May, 2023 and they had started residing at Faridabad. He alleged that with the passage of time, the prosecutrix had started making frivolous demands from him and also to transferr his share in his family property, in her favour and it was on his refusal to do so that she had lodged this case as against him. It has been submitted that relationship between the parties was purely consensual and she had lived with him, with her free will and voluntary consent and, therefore, no case of rape was made out. With these submissions, it is argued that the petitioner who is in custody since 19.09.2023 deserves to be given concession of regular bail as the investigation has since been completed, challan has been presented and trial is likely to take time.

4. Status report has been filed by respondent-State, as per which there are serious and specific allegations against the petitioners. Prosecutrix in her statement recorded under Section 164 Cr.P.C had alleged that the petitioner had started making forcibly relations with her and had also extended threats to kill her children and herself. Therefore, it is urged that the petition does not deserve to be allowed.

5. I have heard learned counsel for the petitioner as well as learned State counsel at considerable length and have gone through the material placed on record.

6. As per version of the prosecution, the prosecutrix and petitioner were in relationship and had even staying in live-in-relationship since May, 2023. Though she has alleged in her statement recorded under Section 164 Cr.P.C. that the petitioner had forcibly maintained sexual relations with her sometimes but a copy of her own deposition recorded before the trial Court has been placed on record by the learned counsel for the petitioner and a persual of contents of this statement reveals that she had clearly admitted therein that she had established physical relationships with the petitioner with her own free will and consent. She is even shown to have stated that if the petitioner would not have left her alone in the accommodation wherein they were living together, she would not have taken steps to lodge this FIR against him. The prosecutrix is a married and mature women and it is clearly established from the record that it was on account of her free will and consent that she started living with the petitioner and has maintained physical relationship with him. Therefore, It cannot be stated to be a case of rape, as

the ingredients commission of offence under Section 375 IPC punishable under Section 376(2) (n) of IPC have not been made out at all.

7. Keeping in view the discussion as made above to the effect that it appears to be a case of consensual physical relationship, the period of incarceration of the petitioner, the fact that material witness already stands examined, there are no chances of his intimidating the prosecutrix and all the attendant facts and circumstances, but without meaning to make any comment on the merits of the case, I am of the considered opinion that the petitioner deserves to be given concession of bail. Hence, the petition is allowed and the petitioner is ordered to be admitted to bail subject to his furnishing personal as well as surety bonds to the satisfaction of learned trial Court/Illaq Magistrate.

01.03.2024

pry

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No