

NARENDRA SINGH

... PETITIONER

VS.

STATE OF HARYANA

.. RESPONDENT

CORAM: HON'BLE MR. JUSTICE VIVEK PURI

Present : Mr. Manish Soni, Advocate
for the petitioner.

Mr. Zorawar Singh Chauhan, Deputy Advocate General, Haryana.

VIVEK PURI, J.

The matter has been taken up through video-conferencing due to COVID-19 pandemic.

Custody certificate of the petitioner has been placed on record.

The petitioner is seeking regular bail in case bearing FIR No. 268 dated 23.08.2021 under Sections 376, 323, 427, 452, 506 and 509 IPC registered at Police Station Sector-40, Gurugram.

Briefly, the case has been registered on the basis of a complaint submitted by the complainant/prosecutrix alleging that she had been working with the petitioner at Sapphire International School and were acquainted with each other. On 05.07.2021, at about 7:00 P.M., the petitioner forcibly entered the room of PG Sector-40 of the complainant, started fighting and hurling abuses upon the complainant. The PG owner and other persons were attracted and the petitioner went away. After some time, he again forcibly opened the door, gained entry in the room, gave beatings, hurled abuses and broke two mobile phones of the complainant. There were injury marks on her body. The petitioner committed rape upon the complainant on many occasions and threatened to eliminate her in the event she made any complaint. On 09.07.2021, the complainant had lodged a

complaint at Police Station Sector-40, Gurugram, but on account of commission of rape and beatings given to her, she was frightened and the police had also called the petitioner who sought apology and had also sent repeated apology messages on the mobile phone. The complainant was frightened and under mental stress at that point of time and requested that the action be taken on the complaint later on. Subsequently, the petitioner had deposited an amount of Rs.1,10,000/- in the account with regard to damage caused to the mobile phones. The petitioner is still harassing and threatening the complainant.

I have heard learned counsel for the petitioner as well as learned State counsel.

It has been contended by learned counsel for the petitioner that there is a delay of 48 days in lodging the FIR, the complainant is a 35 years old divorcee, the case has been got registered with in oblique motive of extortion out of failed love affair, both the petitioner and complainant are major, they were in live-in-relationship which is also made out from the photographs placed on record and relationship between them was consensual.

On the contrary, the learned State counsel has opposed the bail application and argued that serious allegations of commission of forcible sexual intercourse have been levelled against the petitioner, the petitioner has only undergone custody of a period of two months and nine days, the challan has been presented, but the statement of the prosecutrix is yet to be recorded and it will be too early to conclude that there was consensual relationship between the parties.

It may not be appropriate to disbelieve the version of the prosecution at this stage on the score that there is a delay of 48 days in lodging the FIR. There is categorical mention in the FIR that the complainant was frightened, under mental stress and the petitioner had also been apologetic for his acts. As such, it cannot be accepted at this stage that a false case has been foisted upon the petitioner as a result of afterthought.

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The petitioner has sought to build up a case of consensual relationship and alleged that he was in live-in-relationship with the complainant. It may be true that the law acknowledges live-in-relationship, but at the same time, it has also to be borne in mind that the law also acknowledges woman's right to have sexual relationship. The crime of rape consists of committing sexual act without consent or against the will of a person. Even on the assumption that if two persons previously had consensual sexual relationship for any reason whatsoever, the consent of prior sexual acts will not extend to future occasions. It cannot be construed as a circumstance to conclude that the accused gets a right to perpetually exploit the prosecutrix. The withdrawal of the consent effectively nullifies the earlier consent and forcibly sexual intercourse becomes non-consensual attracting the penal provisions of Section 376 IPC.

Furthermore, the allegations in the FIR are silent about any consent at any occasion on the part of prosecutrix. Rather the allegations spelt out are with respect to forcible sexual intercourse. The photographs may indicate that the prosecutrix was known to the petitioner, but it cannot be *prima facie* concluded that the prosecutrix had been a consenting party.

Though the investigation of the case is complete, challan has been presented, but the charge is yet to be framed and the prosecutrix is yet to be examined. At this stage, the defence version of the prosecutrix being a consenting party cannot be accepted which is to be substantiated during the course of trial after the examination of the prosecutrix. Although there are observations in the MLR of the prosecutrix that she was in a consensual relationship with the petitioner for the past one year, but it has also been mentioned that on 05.07.2021 she was physically assaulted and sexually abused. Moreover, the consensual relationship at earlier point of time becomes insignificant in view of the observations which have already been recorded herein-above.

While declining the concession of bail, it has also been observed that in the impugned order that it is necessary that free and fair atmosphere should be given to the prosecutrix to depose in the Court. It may be mentioned here that there cannot be any fault with such observations as recorded in the impugned order particularly because there are allegations to the effect that the petitioner had been harassing and threatening the prosecutrix. The possibility of an attempt on the part of the petitioner to win over or influence the prosecutrix cannot be ruled out.

Moreover, the investigation of the case is complete. There is nothing to suggest the delay on the part of the investigating or prosecuting agency. The petitioner has undergone custody only for a period of two months and 09 months.

Considering the nature and gravity of allegations, stage of trial and period of incarceration, no ground is made out to extend the concession of regular bail to the petitioner.

Dismissed.

03.11.2021
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(VIVEK PURI)
JUDGE

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No