

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRM-M-35480-2018

Date of decision:- 4.10.2018

Rajinder Kumar @ Ravi

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR.JUSTICE H.S. MADAAN

Present: Mr.Bipan Ghai, Senior Advocate with
Mr.V.S. Virk, Advocate
for the petitioner.

Ms.Samina Dhir, DAG, Punjab.

Mr.P.S. Ahluwalia, Advocate
for the complainant.

H.S. MADAAN, J. (Oral)

This petition has been filed for the grant of regular bail to the petitioner – Rajinder Kumar @ Ravi, an accused in FIR No.22 dated 10.2.2018, under Sections 328, 342, 376, 384 IPC, registered with Police Station Kotwali, Patiala.

Briefly stated, the facts of the case, as per the prosecution story are that FIR in this case was lodged by complainant (name withheld to protect her identity in view of Section 228-A IPC and as per the directions given by the Hon'ble Apex Court Court in case titled State of

Karnataka Vs. Puttaraja, 2004(1) RCR(Cri.) Supreme Court, 113 (SC) and referred to as *the prosecutrix*) wife of Rohit Gupta, resident of Mohalla Shamsheer Singh Kitaba Wala Bazar, Patiala by submitting an application to SSP, Patiala, wherein she stated that she is a bank employee; from her wedlock with her husband Rohit Gupta, she gave birth to two children; that accused Rajinder Kumar @ Ravi is acquainted with her being a regular customer of the bank; one day she was alone at home; the petitioner/accused came there holding a bag in his hand and he stated that he was to go out of station, as such he had come to hand over the papers to her for submitting the same in the bank. According to the complainant, she asked him to come inside the house and when she turned back, the accused put a handkerchief on the mouth of the prosecutrix and after inhaling substance put on the same, she became unconscious; that when the prosecutrix gained consciousness, she found herself naked in the bedroom and it transpired that accused had committed rape upon her; subsequently the accused showed her a video clipping prepared by him of that incident and threatened the complainant that in case she raised alarm or disclosed anything to her husband or other person, then he would defame her by uploading the video on internet and would also kill her husband and children, therefore, she kept quiet; subsequently, accused started blackmailing her compelling her to develop physical relations, accordingly she complied with his such wishes and went along with him to various places and hotels, where the accused committed rape upon her against her wishes, clicking her photographs with his mobile phone, which are in his possession; that the accused also compelled her to bring

cash and gold on 2-3 occasions and she accordingly did so; that on some occasion, the accused called her to a hotel, where under threat, he celebrated the occasion by cutting a cake, clicked photographs of complainant and prepared a video film; subsequently, the accused started pressuring her to divorce her husband and then to perform marriage with him; the complainant/prosecutrix was not agreeable, to that accused threatened to upload the photos on social media so as to defame the complainant, as such she started remaining under depression; on one occasion just to know the intention of accused, the complainant called him and asked him to perform marriage with her but the accused refused to do so and rather threatened the complainant.

Thereafter, the complainant reported the matter to the police. After registration of formal FIR, the investigation in the case started. The accused was arrested in this case on 13.2.2018. After completion of investigation, challan has been filed in the Court and the petitioner/accused is facing the trial. He had moved an application for regular bail in Court of Sessions at Patiala but was unsuccessful as the same was dismissed vide order dated 1.8.2018 passed by learned Additional Sessions Judge (Exclusive Court for Heinous Crimes Against Women), Patiala, as such, he has approached this Court for grant of the similar relief.

Notice of the petition was given to the State and State counsel has put in appearance. The complainant has also appeared through counsel.

I have heard learned counsel for the parties besides going

through the record.

Learned counsel for the petitioner has contended that the prosecutrix is a married woman of 40 years having children and she was involved in an affair with the accused; that she is younger to him by 10 years; that when her husband come to know about the affair, she lodged the FIR to save her skin and as a matter of fact whatever happened was with consent of the complainant; that the accused had moved an application to C.M. Punjab regarding his innocence, which was marked to SSP, Patiala, who constituted Special Investigation Team, which conducted an investigation in the matter and found the petitioner/accused to be innocent vide report dated 28.5.2018, as such, the supplementary challan under Section 173(8) Cr.P.C. was presented in the trial Court on 30.5.2018, which was wrongly not accepted by the trial Court. Learned counsel for the petitioner has drawn my attention to para No.5 of the reply submitted by State of Punjab in that regard praying that the petitioner be granted concession of regular bail.

Whereas, this request is being resisted by learned State counsel as well as learned counsel for the complainant contending that keeping in view the seriousness of allegations, the prayer for grant of regular bail be declined.

After hearing the rival contentions, I find that the complainant is a married woman serving in a bank. The first incident narrated by her took place about 2 ½ years prior to registration of the FIR. However, silence and inaction of the complainant for such a long time does put a question mark over the credibility of her version. According to

the complainant/prosecutrix, she had been going along with the accused to various places. The accused has placed on record various photographs, which reflect the complainant and accused together in a happy mood. These photographs could not possibly be clicked, if the prosecutrix had gone unwillingly with the accused. This rather points out that whatever happened was with the consent of the complainant. The story narrated by the complainant/prosecutrix in the FIR appears to be somewhat unconvincing. After the investigating agency had filed the challan, an Special Investigation Team constituted by SSP, Patiala had conducted probe finding accused to be innocent and then supplementary challan was filed in the Court and it is a different matter that the same was not accepted by the trial Court. However, these facts can certainly be taken into consideration. The trial is going on and its conclusion is likely to take some time, therefore, it shall be in the fitness of things, if regular bail is granted to the petitioner.

Accordingly, the petition is allowed. The petitioner be admitted to bail during the pendency of the trial, subject to his furnishing bail bonds and surety bonds to the satisfaction of the trial Court/Chief Judicial Magistrate, Patiala, subject to the following conditions:

- (i) he shall appear in the Court on each and every date of hearing;
- (ii) he shall not give any threat or intimidation to the prosecution witnesses; and
- (iii) he shall not leave India without prior permission of the Court and shall surrender his passport, if he has got

one, otherwise to furnish affidavit in that regard.

In addition to that the trial Court may impose any term and condition found suitable to ensure that the petitioner does not abscond and interfere in the trial.

In case the petitioner violates any term and condition on which the bail has been granted to him, the prosecution would be entitled to apply for cancellation of bail.

It is clarified here that nothing discussed above be taken as any opinion on the merits of the case.

4.10.2018
Brij

(H.S. MADAAN)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No