

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Criminal Misc. No. M-33695 of 2019 (O&M)
Date of decision : November 05, 2019

Rakesh Kumar

....Petitioner

versus

State of Punjab

....Respondent

Coram: Hon'ble Mr. Justice Fateh Deep Singh

Present : Mr. Aman Dhir, Advocate, for the petitioner

Mr. Pawan Sharda, Sr. DAG Punjab for the State

Mr. Ajit Singh, Advocate, for the complainant

Fateh Deep Singh, J. (Oral)

Petitioner-accused Rakesh Kumar has filed this first regular bail application in case FIR No. 38 dated 12.2.2019, under Sections 376, 451, 354, 323, 506 IPC, Police Station Zirakpur, District SAS Nagar Mohali.

Heard Mr. Aman Dhir, Advocate, for the petitioner; Mr. Pawan Sharda, Sr. DAG Punjab for the State; Mr. Ajit Singh, Advocate, for the complainant and perused the records.

The present allegations have come about from a married lady aged around 40 years with two grown up sons. It is alleged that on 11.2.2019 she received a telephonic call and when the complainant tried to know his identity, the person put down his phone and thereafter on 3/4 occasions she received telephonic calls from the same person showing his inclination to visit her at her home. It is alleged that the same very day while her sons were in the house the accused-petitioner came and started talking about property matters when the complainant told the accused that she was not interested in buying any property. While the complainant and petitioner were interacting the children of the complainant went out of the house and while the complainant was working in kitchen, the accused is alleged to have bolted the door and started misbehaving with the complainant and thereafter threw her on the bed and tore off her clothes and in the process defiled her under threat leading to the registration of the present case.

Mr. Aman Dhir, counsel for the petitioner argues that the complainant happens to be married grown up lady aged around 40 years with two sons who are also grown up and that the story on the face of it appears to be highly improbable and there is nothing corroborative to establish that rape has taken place. It is contended

that even earlier the complainant with a view to blackmail Mukesh Virmani had got lodged an FIR Annexure P/2 and that the wife of the said person had got an FIR lodged against the present complainant for blackmailing the family and thus, sought to project that the complainant is trying to put the same thing to the petitioner in connivance with her cohorts.

Learned State counsel assisted by Mr. Ajit Singh, learned counsel for the complainant have stoutly opposed the grant of the bail on the grounds that if allowed bail, the petitioner will influence the witnesses and stifle the trial and heinousness of the offence disentitles the petitioner to any relief.

Going through the submissions, admittedly as is there the complainant happens to be a grown up lady with two major sons. To the specific query of the Court, learned State counsel could not show to the Court any medical evidence to corroborate the case of the complainant. The documents placed on the record Annexures P/2 and P/3 are reflective of a similar contrivance subsequent to this case whereby similar allegations have come about against one Mukesh Virmani son of Ram Parkash Virmani and the fact of having received cash amount under the garb of this blackmailing. Thus, a debatable issue arises over the veracity and applicability of offence

under Section 376 IPC. In the light of this background and the fact that the petitioner is behind the bars since more than eight months and culpability if any shall determined at the trial which is not likely to be concluded in near future, no purpose will be served by retaining the petitioner in jail. Accordingly, he is ordered to be released on regular bail to the satisfaction of learned Chief Judicial Magistrate/Duty Magistrate, SAS Nagar, Mohali.

The present petition stands disposed off accordingly.

The observations made herein above shall have no bearing on the merits of the case as these are purely for the disposal of the present bail application.

November 05, 2019

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**(Fateh Deep Singh)
Judge**

*Whether speaking/reasoned ?
Whether Reportable ?*

*Yes/No
Yes/No*