

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

213

CRM-M-21562 of 2020

Date of decision :-05.10.2020

Satnam

...Petitioner

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr.H.S. Mann, Advocatefor the petitioner.

Mr. Rajiv Sidhu, DAG, Haryana
for the State-respondent No.1.Mr. Gursewak Singh, Advocate
for the complainant-respondent No.2.**SUVIR SEHGAL, J.**

The hearing of this petition has been taken up through video conferencing due to outbreak of coronavirus (Covid-19).

Through the instant petition filed under Section 439 of the Code of Criminal Procedure, 1973, the petitioner seeks grant of regular bail in FIR No.06 dated 01.02.2020 registered under Sections 354-D, 376, 450 and 506 of the Indian Penal Code, 1860 at Police Station Women, Dabwali, District Sirsa.

As per the version of the prosecution, the instant FIR was registered on the complaint of a lady (hereinafter referred to as 'victim/prosecutrix') wherein she stated that she was married 08 years ago and due to marital discord with her husband, for the last three years, she was staying with her parents and a three years old son. The petitioner, Satnam son of Parsa Ram, was a friend of her brother and used to often come to their

house. About 1½ month back, he came to their house at night and finding her alone with her son, he ravished her. The petitioner threatened to kill her if she disclosed the incident. He continued to stalk her and threaten her whenever she stepped out of the house. Medical of the victim was conducted and the petitioner was arrested on 17.02.2020.

Counsel for the petitioner has argued that false allegations have been levelled against the petitioner. He urges that there is a delay of almost 02 months in the lodging of the complaint. As per him, the medical report does not show any detection of semen. By placing reliance on affidavit dated 24.07.2020, Annexure P-2, executed by the complainant, he submits that the relationship between the two was consensual.

Per contra, State counsel has opposed the petition upon instructions from ASI Ompati. He has filed the status report by way of a reply in the shape of affidavit of Kuldeep Singh Beniwal, HPS, DSP, Dabwali, District Sirsa dated 08.09.2020 by email, a print out of which is taken on record and a copy thereof, has been supplied to the counsel for the petitioner. He submits that serious allegations have been levelled by the victim and are duly supported by her in her statement. Upon further instructions, he submits that the challan was presented on 06.03.2020 and the charge is yet to be framed and even the prosecutrix has not been examined, therefore, this is not the stage for grant of bail to the petitioner, particularly, since there are allegations that the petitioner has been threatening the prosecutrix.

Counsel for the complainant-respondent No.2 has supported the petitioner and submitted that he has no objection, in case the petitioner is granted regular bail.

I have considered the rival submissions of the parties.

The arguments raised by the counsel for the petitioner deserve to be noticed and rejected. In paras 4 and 5 of the petition, the petitioner has submitted as under: -

“4. That it is pertinent to mention here that admittedly there is delay of about 02 months, which creates the doubt in the prosecution story.

5. That it is pertinent to mention here that the complainant had disclosed the true story by way of affidavit. In her affidavit, she categorically stated that “I got registered above-mentioned FIR in haste without knowing the truth at the instigation of residence of village and because I was upset due to differences with my husband Jitender with whom my marriage was solemnized 09 years ago and divorce case is pending at Sirsa Court. Above mentioned Satnam had not developed physical relations with me against my wishes. That if Satnam is granted bail in abovementioned case then I shall have no objection and I have given this affidavit in my full consciousness, with my free consent and without any pressure.” The affidavit dated 24.07.2020 is enclosed herewith is annexed herewith as Annexure P-2.”

In reply, the State in its reply-affidavit has responded as under: -

“4. That in reply to contents of para No.4 of the petition, it is submitted that the prosecutrix in her statement before the police stated that after commission of the above offence, the accused, present petitioner threatened the prosecutrix for her life if she will tell this incidence (incident) to anyone and due to

this fear, she did not tell about this incidence (incident) to anyone.

5. That in reply to contents of para No.5 of the petition, it is submitted that no such affidavit was given by the prosecutrix to the police during the course of investigation and no such affidavit is part of the final report.”

This Court has examined the affidavit, Annexure P-2, allegedly executed by the complainant and the same appears to be doubtful. The affidavit has been attested in District Fatehabad, which is about 40 kms away from the residence of the accused-petitioner and the victim, who are residents of Mota Paniwala, Tehsil Dabwali, District Sirsa. The affidavit has been executed after the petition for regular bail was dismissed by the learned Additional Sessions Judge vide order dated 17.07.2020, Annexure P-3 . The affidavit has not even been submitted to the prosecution agency. The same seems to have been procured from the petitioner by coercion. The Court has no hesitation in discarding the affidavit.

Be as it may, it may be noticed that in the affidavit, the petitioner has not denied the incident but has merely stated that the physical relations were with her consent. There is no denial to the allegations regarding of stalking or intimidating the victim by the petitioner which attract the provisions of Sections 354-D and 506 IPC.

The allegations levelled by the petitioner have been duly supported by her in her statement before the Magistrate recorded on the next day which form part of the status report filed by the State. This statement cannot be lightly brushed aside.

Considering the totality of the facts and circumstances, the gravity of the offence, the nature of allegations and the fact that the victim is

a hapless lady who is staying separately from her husband and the petitioner has probably taken advantage of her circumstances, the petitioner is not entitled for the grant of concession of regular bail.

The petition is accordingly dismissed.

It is clarified that any observation made hereinabove shall not be construed to be an expression of opinion on the merits of the case.

05.10.2020
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(SUVIR SEHGAL)
JUDGE

Whether Speaking/reasoned : Yes/No
Whether Reportable : Yes/No