

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-22518-2020 (O&M)

Date of Decision: August 19, 2020

DINESH

..... Petitioner(s)

Versus

STATE OF HARYANA

..... Respondent(s)

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Gaurav Arora, Advocate and
Mr. Yashpal Thakur, Advocate
for the petitioner.

Mr. Anmol Malik, DAG, Haryana.

Mr. Kamal Chaudhary, Advocate
for the complainant.

LISA GILL, J.

This matter is being taken up for hearing through video conferencing due to outbreak of the pandemic, COVID-19.

The petitioner prays for grant of bail pending trial in FIR No.272, dated 14.12.2019 under Sections 376(2)N,323, 506 IPC, registered at Women Police Station Faridabad, District Faridabad.

The FIR was registered on a statement of the complainant/victim, who stated that she was 29 years old and had studied up to 6th standard and she is one of the six siblings. It is further stated that three years prior to registration of the FIR, the complainant had come in contact

with the petitioner and ultimately there developed a friendship between them. The petitioner is alleged to have committed rape upon the complainant, three years prior to the registration of the FIR and thereafter threatened her not to disclose the incident to anyone as otherwise he would kill her and he also threatened to make public a video clip, which he had allegedly prepared. It is further submitted, that the petitioner thereafter, assured the complainant that he would marry her and under the false promise of marriage, he committed rape upon her several times. The petitioner is alleged to have called the complainant on 14.12.2019 in one Happy Home Residency Hotel at Faridabad, assuring the complainant, that he would marry her on the said date, in Chimney Bhai Dharamshala and asked her to bring Rs.50,000/- for the expenses of the marriage. The petitioner, on the said date is again alleged to have committed rape upon the complainant and physically abused her as well. He refused to marry the complainant. The abovesaid FIR was thus registered on 14.12.2019. In her statement, under Section 164 Cr.P.C. on 14.12.2019 (Annexure P-2), the complainant reiterated the allegations of rape. It is additionally mentioned that the petitioner would bet money on matches and he borrowed huge sums of money from the complainant.

Learned counsel for the petitioner vehemently argues that the allegations in the FIR do not constitute an offence punishable under Sections 376(2) N, 323, 506 IPC in any manner. The relationship, if any (though denied), was entire consensual. It is further submitted that no promise of marriage etc. was ever extended by the petitioner at any stage.

Learned counsel has placed reliance upon the judgment of Hon'ble Supreme

Court in *Parmod Suryabhan Pawar Vs. State of Maharashtra and another in Criminal Appeal No. 1165 of 2019*, to contend that it is debatable whether the offence punishable under section 376(2)N, is made out against the petitioner. It is further submitted that the petitioner is in custody since 14.12.2019 and challan in this case stands presented. It is, thus, prayed that this petition be allowed.

Learned counsel for the complainant vehemently opposes the bail application. Though, it is not denied that the complainant, who is admittedly 29 years old, was known to the petitioner three years prior to the registration of the FIR, it is explained that the complainant did not raise any objection due to fear of the video clipping prepared by the petitioner, being made public. Moreover consent, if any, was stated to be given on an assurance of marriage by the petitioner. It is, thus, prayed that this petition be dismissed.

Learned counsel for the State, on instructions from ASI Bhagwanti verifies that the petitioner has been in custody since 14.12.2019. Final report under Section 173 Cr.P.C./challan stands presented. It is brought to my notice that no video clipping etc. has been recovered from the petitioner.

There is no allegation that the petitioner is likely to abscond. Due to situation created by the outbreak of the pandemic COVID-19 trial in this case is not likely to be concluded in the near future. No useful purpose would be served by keeping the petitioner incarcerated any longer.

At this stage, it is relevant to note that learned counsel for the complainant had submitted on the last date of hearing, that the complainant was being threatened by the petitioner's father and one Dheeraj, besides Vikas. As the details of the threats etc. was not available with learned counsel for the complainant, the matter was adjourned from yesterday for today, by way of abundant caution. Learned counsel for the complainant stated that details of the telephone numbers etc. from where the alleged calls had been received by the complainant and other details would be supplied, immediately to the state counsel and to the Investigating Officer, who was directed to immediately look into the allegations.

Learned counsel for the State on instructions from ASI Bhagwanti, submits that the complainant has not contacted the Investigating Officer neither any details in respect to the averments have been supplied except a telephone number of one Vikas, who allegedly called the complainant through a WhatsApp call on 14.08.2020. The complainant informed the investigating officer that she was busy tending to her allegedly ailing mother.

However, on a pointed query, learned counsel for the complainant is still unable to give details regarding the specific dates or other telephone numbers from which the petitioner's father or other persons may have given threatening calls to the complainant. No details regarding the complainant being threatened are forthcoming at this stage apart from the general allegations being raised, except one WhatsApp call, which was received on the mobile phone of the complainant on 14.08.2020. However, learned counsel for the petitioner submits that the so called Vikas, stated to

have called the complainant, is neither known to the petitioner nor is his relative. Therefore, at this stage and in the given circumstances I do not find the above to be a ground to deny the concession of bail to the petitioner.

That being said, it is clarified that, as and when the complainant divulges the complete details of any threat-telephonic or otherwise, which she may have received, the same shall be looked into, immediately, by the police authorities and necessary action shall be taken thereon.

Keeping in view the facts and circumstances of the case but without commenting upon or expressing any opinion on the merits thereof, this petition is allowed. The petitioner be released on bail pending trial subject to his furnishing requisite bail bonds and surety to the satisfaction of the learned Trial Court/Duty Magistrate.

It is further made clear that neither the petitioner or his family members or anyone on his behalf shall contact the complainant or any of her family members, witnesses etc., in this case, directly or indirectly. Any such infraction on the part of the petitioner may entail cancellation of his bail.

It is clarified that none of the observations made hereinabove shall be construed to be a reflection on the merits of the case. The same are solely confined for the purpose of decision of the present petition.

19.08.2020

Sunil

(LISA GILL)
JUDGE

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No