

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-M-22990 of 2020 (O&M)

Date of decision : 19.8.2020

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Meer Mohamad

.....Petitioner

vs.

State of Punjab and others

.....Respondents

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: Mr. Mohd. Salim, Advocate
for the petitioner.

Mr. J.S. Ghuman, Deputy Advocate General,
Punjab.

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H. S. Madaan, J. (Oral)

Case taken up through video conferencing.

This petition for grant of regular bail has been filed by petitioner Meer Mohamad, aged about 35 years, an accused in FIR No. 96 dated 9.6.2019 for offences under Sections 365, 148, 149 IPC (Section 376 IPC added later on), registered at Police Station Dakha, District Ludhiana.

Briefly stated, facts of the case as per the prosecution story are that, that criminal machinery in this case was set into motion by complainant Rehmat Ali s/o Bashir Mohammad resident of village

Ghumayat, Police Station Koom Kalan, aged about 29 years, who in his statement got recorded with the police stated that his sister – prosecutrix (name withheld to conceal the identity), aged about 35 years, was married with Israil son of Gazia, resident of village Badla, Tehsil Khanna; the couple was blessed with six children. However, Israil has since died about 4-5 months earlier. Israil was related to Bag Hussain resident of Jammu. After death of Israil, Bag Hussain used to meet the complainant. On 7.6.2019, the prosecutrix alongwith some other relatives came to the village of the complainant. Firoza niece of the complainant and her mother, the prosecutrix, stayed at the house of complainant, whereas the other relatives went back. On 9.6.2019, the complainant accompanied by the prosecutrix had gone to village Boparama, to meet their maternal aunt Khatija. At about 8.00 P.M., while the complainant and prosecutrix were going on foot, 6-7 persons in a Tavera car of black colour came there. Bag Hussain alighted from the car and he picked up the prosecutrix and forcibly put her in the car. There were other persons in the car including Balli, besides 4-5 other unidentified persons; the car was sped away. The complainant was pushed off, as such he could not rescue the prosecutrix. In that way, the prosecutrix had been abducted.

On 23.6.2019, the prosecutrix was recovered and her statement was recorded by the police. Her statement under Section 164 Cr.P.C. was also got recorded from the Magistrate. Initially, the FIR had been registered for offences under Sections 365, 148, 149 IPC. However after the prosecutrix was recovered and her statement

was recorded by the police, offences under Sections 376 and 120-B IPC were added.

The case was investigated, during the course of which, name of the petitioner accused Meer Mohamad cropped up being involved in the incident. The accused was accordingly arrested in this case on 26.6.2019. He had moved three applications before the Courts of Sessions at Ludhiana. However, all the three applications were dismissed, last third application, having been dismissed on 29.7.2020. The petitioner had approached this Court earlier by way of filing a petition for regular bail vide CRM-M-12656 of 2020, which was disposed of vide order dated 3.6.2020. The same is being reproduced for ready reference :-

“Case taken up through video conferencing.

Notice of motion.

At the asking of the Court Ms. Rashmi Attri, AAG, Punjab, accepts notice on behalf of the respondent-State.

Learned counsel for the petitioner states that he be permitted to withdraw the instant petition, granting him liberty to file fresh one after statements of prosecutrix, complainant and other material witnesses are recorded.

Dismissed as withdrawn with liberty aforesaid.”

However, despite the fact that statements of prosecutrix, complainant and other material witnesses have not been recorded so

far, the petitioner has come to this Court again seeking grant of regular bail.

The reason given in the petition for filing this petition is that the petitioner had approached the trial Court for examination of prosecutrix and other witnesses, since the matter has been compromised between the parties and there are bright chances of marriage of petitioner No. 1 with the prosecutrix, but the trial Court refused to take up the case on account of outbreak of pandemic Covid-19. Therefore, he be granted regular bail.

This request is being vehemently opposed by the learned State counsel.

I have heard learned counsel for the petitioner, learned State counsel, besides going through the record and I find that the present petition is absolutely without any merit.

This is a case of gang rape of a widowed woman. It is specific case of the prosecution that petitioner -accused Meer Mohamad, who is none else but younger brother of deceased husband of the prosecutrix, was desirous of contracting marriage with the prosecutrix, after death of her husband. However, the prosecutrix was not agreeable to that. Therefore, Meer Mohamad had turned her out of the matrimonial home and she was compelled to fall back upon her brother – the complainant. It is also the case of the prosecution that petitioner -accused Meer Mohamad, in connivance with his co-accused namely, Rahimdin, Bagh Hussain, Shaffi, Balli and another unknown person, had abducted her and all of them used to have sex

with the prosecutrix, forcibly against her wishes. In that way, it is a case of gang rape, which is a very heinous crime. Although it is stated by counsel for the petitioner -accused that the matter has been compromised between the parties, in terms of compromise copy Annexure P-2, wherein the complainant Rehmat Ali, has stated that the FIR was got registered due to some misunderstanding between the parties and now the matter has been compromised with the intervention of the respectables. This compromise rather than helping the case of the petitioner, adversely affects the chances of his being released on regular bail.

Section 376 (g) IPC deals with gang rape, providing punishment of rigorous imprisonment for a term which shall not be less than 20 years but which may be extended for life, meaning thereby that imprisonment would be for remainder of person's natural life. In that way, it is a grave and serious crime. It is not only a crime against a particular woman, but against the society as a whole. Such type of crimes put women in state of fear and insecurity and they tend to restrict their movements outside their houses, nursing an apprehension that the miscreants may indulge in their abduction and rape. It is not that one can indulge in such type of heinous crimes, enter into some sort of settlement with the victim or her family and then ask for being released on bail for the said reason. Release of such type of persons-accused of such type of serious type of crime, in such a manner would send a wrong signal in the society that one can indulge in a serious crime and then get away with that in

a light manner.

The offences under sections 365 and 376 IPC are non-compoundable, as perusal of relevant Section 320 Cr.P.C. goes to show.

Furthermore, the prosecutrix, who is the aggrieved person in this case, is not a party to the alleged compromise Annexure P-2. The complainant has no right to enter into any such compromise on behalf of the prosecutrix.

Now, coming to the second ground on which the bail is being sought, i.e. the proceedings in the trial Court having been held on account of Covid-19, this pandemic has affected a large part of the world, the number of infected persons throughout the world running into crores and deaths into lakhs, this is an unprecedented epidemic. The life had almost come to stand still, when this pandemic started affecting the human population and got spread very quickly. The functioning of the courts was also got affected. However, things are slowly returning to the normal and hopefully situation would improve further with the passage of time and normal working would be resumed in the Court in near future.

Furthermore, a criminal can certainly be not allowed out on bail simply for the reason that trial could not made progress for some time. The prosecution can certainly be not blamed for not causing appearance of the prosecution witnesses in the trial Court. Similarly, the courts cannot be held responsible for that stalemate because as observed earlier, this is an unprecedented situation. As per judgment

delivered by the Apex court, a High Powered Committee had been constituted to examine the cases of undertrials and other jail inmates, who could be granted bail/parole for some time on account of Covid-19 pandemic. However, the persons who were guilty/accused of committing grave offences of certain categories, were not considered for grant of that benefit. Under the circumstances, the petitioner cannot seek that benefit from this Court indirectly.

Furthermore, the apprehension expressed by learned State counsel that if released on bail, there is possibility of petitioner-accused tampering with the prosecution evidence, by giving threats or inducement to the prosecution witnesses, cannot be brushed aside lightly, for the reason that as per own case of the petitioner, he while being behind the bars has entered into settlement with the complainant and if he is released on bail, he can further damage the case of the prosecution by use of persuasion, coercion, intimidation etc. upon the prosecution witnesses.

It may be mentioned here that the alleged compromise relied upon by the petitioner is dated 9.12.2019, which was there when the petitioner had withdrawn the first petition for regular bail filed by him in this Court. Counsel for the petitioner had stated that he would file a fresh petition after statements of prosecutrix, complainant and other material witnesses are recorded and consequently, petition was dismissed as withdrawn with liberty aforesaid on 3.6.2020, the petitioner had filed a petition again on 13.8.2020, without waiting for sufficient time for recording of statements of prosecutrix,

complainant and other material witnesses. Therefore, the petition is doomed for failure and is dismissed accordingly.

However, nothing discussed above shall have any bearing on the merits of the case.

19.8.2020

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(H.S. Madaan)

Judge

Whether speaking / reasoned	Yes / No
Whether reportable	Yes / No