

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

CRM-M-50762 of 2019 (O&M)
Date of Decision: March 05, 2020

Sanjay Kumar

...Petitioner

Versus

State of Haryana

...Respondent

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. N.S. Shekhawat, Advocate
for the petitioner.

Ms. Mahima Yashpal, AAG Haryana.

Mr. Nikhil K. Chopra, Advocate
for the complainant.

JAISHREE THAKUR, J. (Oral)

The instant petition has been filed under Section 439 Cr.P.C. for grant of regular bail to the petitioner in case FIR No.361 dated 12.07.2019, under Sections 323, 354, 376, 452 of Indian Penal Code, registered at Police Station Pehowa, District Kurukshetra.

Learned counsel for the petitioner contends that the petitioner herein was taken into custody in the aforesaid FIR on 07.08.2019. It is argued that the petitioner herein has been falsely implicated in the present case. It is submitted that in the initial statement that has been recorded of the complainant, there was no allegation of rape, however, an improvement has been made thereafter. It is argued that there is no evidence to

substantiate the fact that the complainant had been subjected to physical abuse. It is submitted that the petitioner and the complainant were well known to each other, as would be evident from the photographs annexed with the petition. It is also submitted that both were students of Kurukshetra University and they were in a relationship and, therefore, the allegations of rape in the year 2016 are totally unsustainable. It is argued that a reading of the FIR initially recorded on 12.07.2019 would reflect that no allegations of rape were levelled therein, in which it has been stated that petitioner-Sanjay and co-accused Deepak came to her house in a car and tried to rape her and when they were taking her away, she raised a noise, which resulted in her brother coming to the shop. It is submitted that in the instant case FIR that was registered on 12.07.2019, on which day the complainant did not get herself medically examined. In fact, she went for her medico legal examination on 17.07.2019 and shown her injuries to the doctor, but did not get her Gynae check up conducted. It is also pointed out in her initial statement recorded under Section 161 Cr.P.C. by the police and even in her statement recorded on 17.07.2019 under Section 164 Cr.P.C. by the JMJC/Duty Magistrate, Pehowa, there were no allegations of rape levelled by her. It is contended that allegations of rape were levelled for the first time in a supplementary statement recorded on 07.08.2019 by the police. It is pointed out that this supplementary statement was got recorded by her, after she had been caught red handed on 22.07.2019 while demanding the amount of ₹2,80,000/- in order for her to withdraw/compromise the FIR in question. It is also contended that there is an FIR bearing No.391 dated 22.07.2019, registered under Sections 384,

120-B of IPC at Police Station Pehowa, District Kurukshetra against the complainant herself, while submitting that there was a Duty Magistrate, who had been the part of the team that had recovered the extorted money given to the complainant, which money had been agreed to between the parties to settle all disputes. In fact, the complainant was blackmailing the petitioner herein. It is also argued that the allegation of rape, if any, pertain to the year 2016 and no complaint had been made by her in the interregnum. It is contended that charge has already been framed in the matter under Section 376 of Indian Penal Code, which charge itself is not sustainable. It is argued that in her supplementary statement recorded on 07.08.2019, she had made a statement that she had been subjected to rape on 22.11.2016 at 9th Planet Hotel, Kurukshetra, which statement has been investigated by the police, who have found out that both the petitioner and complainant had voluntarily taken a room in the hotel. Counsel for the petitioner would also pointed out that there is a statement made by an independent witness namely Salim stating that after coming to his juice shop, the petitioner did not leave the said premises.

Per contra, learned State counsel as well as learned counsel for the respondent-State oppose the grant of regular bail to the petitioner, by contending that the allegations as set out in the FIR are serious in nature and there is enough evidence available on the record with the Investigating Officer to substantiate the charges as levelled. It is argued that the FIR that has been got registered at the behest of the petitioner that the complainant was demanding money, is already pending before this court and sub judice. It is submitted that even though a challan has been presented in the said

matter, however, there is stay on the framing of the charges. It is also contended that statement of the complainant ought to be allowed to be recorded by the trial court, before the regular bail is allowed to the petitioner.

I have heard learned counsel for the parties and with their assistance, have perused the pleadings as well as police file that has been brought to the court today. A reading of the FIR initially recorded would reflect that there is no allegation of rape, other than the allegation of an attempt to do so. Even in the statement recorded before the JMIC/Duty Magistrate, Pehowa on 17.07.2019 under Section 164 Cr.P.C. no such allegations of rape were there. The allegation of rape were levelled by the complainant for the first time in her supplementary statement recorded on 07.08.2019 by the police. The complainant also refused to get herself medically examined and there is also an FIR available on record, which would reflect that the complainant had been caught red handed for demanding a sum of ₹ 2,80,000/-. There are major discrepancies in the FIR lodged by the complainant and in the statement got recorded by her before the JMIC/Duty Magistrate, Pehowa on 17.07.2019. Moreover, co-accused Deepak has already been allowed regular bail by the Coordinate Bench of this court on 02.11.2019 in CRM-M-45223 of 2019.

Since, the trial is likely to take some time and in view of the facts that the petitioner herein has been in custody since 07.08.2019 and that charges have been framed in the matter, no useful purpose would be served in keeping the petitioner behind bars. At this stage, without commenting on the merits of the case, the instant petition is allowed and the petitioner is

directed to be released on regular bail on execution of personal bond for a sum of ₹ 3 lacs with one surety in the like amount to the satisfaction of concerned trial Court/Duty Magistrate. It is made clear that the petitioner would visit Pehowa only if required court in the matter and during the pendency of the present case, the petitioner would not visit the vicinity or the locality of the complainant at Pehowa and also would not try to contact the complainant or her family members directly or indirectly in any manner whatsoever. In case, there is a violation thereof, the State/complainant is at liberty to approach for cancellation of the bail.

However, anything observed or said by this court is only for the purpose of deciding the instant petition for grant of regular bail and the same shall have no effect on the merits of the case.

March 06, 2020

vijay saini

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No