

**In the High Court for the States of Punjab and Haryana
At Chandigarh**

CRM-M-14756-2021 (O&M)
Date of Decision:- 23.12.2021

Sunil Kumar @ Sunny

... Petitioner

Versus

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Deepak Singh Saini, Advocate for the petitioner.

Mr. Rajiv Sidhu, DAG, Haryana,
assisted by Inspector Neha.

GURVINDER SINGH GILL, J.

1. The petitioner has approached this Court seeking grant of regular bail in respect of a case registered vide FIR No. 41 dated 21.7.2018 at Police Station Women, Panchkula under Sections 328, 342, 506, 376-D, 370/120-B of Indian Penal Code and Sections 3, 4, 5, 5-A, 5-B, 5-C, 6, 7 and 9 of Immoral Traffic (Prevention) Act, 1956.
2. The FIR in question was lodged at the instance of the victim wherein it is alleged that the husband of the victim is a labourer and that on 15.7.2018 Sunny (petitioner Sunil Kumar), who knew the victim's husband told her husband that he would provide some work to the victim at his farm house and that the victim would be required to do cleaning and kitchen work at the

farm house and he would pay an amount of ₹12,000/- per month. It is alleged that Sunny also assured that he would also arrange for a job for victim's husband. The victim alleged that she went to the farm house of Sunny (petitioner) where she was administered some drug and was raped while in a state of unconsciousness. When the victim regained consciousness, she asked the accused to call her husband but they did not call her husband and also snatched her mobile phone. It is further alleged that aforesaid Sunny used to bring 10-12 persons every day who were known to him and they used to commit rape upon her and she was kept in a locked room. It is alleged that on 18.7.2018, nine persons committed rape upon her out of which two were police officials and that she could identify all of them. The complainant alleged that she somehow managed to escape from the farm house and went to Panchkula and narrated the entire incident to the police.

3. Learned counsel for the petitioner has submitted that the petitioner has falsely been implicated in the present case and that even if all the allegations as alleged are taken to be correct, still the same at best would constitute an offence under Immoral Traffic (Prevention) Act, 1956 which is punishable for a maximum imprisonment of 2 years whereas the petitioner as on date has already undergone 3 years and 6 months. It has been submitted that the medical evidence as led by the prosecution does not support the case of the prosecution at all as regards the allegations of rape much less allegations of gang rape on 18.7.2018 inasmuch as no injury was found on the person of the prosecutrix. It has also been submitted that the FSL report also does not suggest anything in support of the case of the prosecution. The learned counsel has referred to a judgment dated 16.10.2019 passed in CRM-A 1887-

MA of 2017 - Union Territory, Chandigarh Vs. Amit Kumar @ Rachu and others in support of his contention. The learned counsel for the petitioner has submitted that since all other co-accused have been ordered to be released on bail, the petitioner also deserves the same concession on grounds of parity.

4. On the other hand, the learned State counsel has submitted that the petitioner is the main accused and that he was running a guest house by taking the same on lease where the prosecutrix was initially allured on the pretext of offering employment but was raped and infact was gang raped on 18.7.2018. It has been submitted that the petitioner infact invited his friends and acquaintances for raping the victim and that she had been made a captive. The learned State counsel, while referring to reply dated 16.12.2021 by way of affidavit of Shri Umed Singh, Assistant Commissioner of Police, Panchkula, has drawn the attention of this Court to photographs (Annexure R-4) wherein the petitioner is shown sitting at the counter of the hotel in question. The learned State counsel has also referred to some of the photographs which are printouts of screenshots taken from the mobile of the petitioner i.e. mobile No. 9306373059, annexed as Annexure R-5, which show that the photographs of the prosecutrix had been shared on Whatsapp with co-accused Shobit on his mobile No. 9050450617.
5. I have considered rival submissions addressed before this Court.
6. Though, during the course of arguments, the learned counsel for the petitioner submitted that the said photographs cannot be said to be indicative of any rape upon the prosecutrix but the said contention would not be of any assistance to the petitioner inasmuch as the petitioner had no business in

sharing photographs of the prosecutrix through Whatsapp even if she was her employee. Rather, sending of photographs to his friends would substantiate the case of the prosecution inasmuch as the petitioner had invited his friends to commit physical/sexual accesses upon the prosecutrix.

7. In Amit Kumar's case (Supra), relied upon by counsel for the petitioner which is a decision rendered in appeal against acquittal, the facts were distinct inasmuch as it was observed that the defence version to the effect that there was an affair between the accused and the prosecutrix could be probable whereas in the present case there is no such plea of love affair or consensual physical relations and the allegations specifically pertain to gang rape and a part of the which would stand substantiated from the fact that the petitioner had been inviting his friends/acquaintances by sending photographs of the prosecutrix to his friends immediately when the prosecutrix had been made a captive. Further, in the cited case, the prosecutrix was alleged to have been kept confined in a *jhuggi* for 2 days and the Court observed that the prosecutrix could have very well raised hue and cry in case she has been forcibly kept in a *jhuggi* whereas in the present case the prosecutrix has been kept in a hotel and even if she had raised any hue and cry in a room in a hotel, the same was unlikely to be heard by anyone else.
8. The prosecutrix in her statement recorded in terms of Section 164 Cr.P.C. and also in her statement recorded during the proceedings of the trial has stated consistently with regard to the case of the prosecution as regards her rape. The petitioner, being the main accused, and the allegations against him virtually having been substantiated, this Court is unable to accept the

contention of the petitioner that it is merely a case falling under the mischief of Immoral Traffic (Prevention) Act, 1956 and not under Section 376-D IPC. As such, having regard to aforestated facts and the heinous nature of crime, no case for grant of bail is made out.

9. The petition is sans merit and is dismissed.
10. It is, however, clarified that none of the observations made above shall be taken to be an expression on merits of the main case.
11. The trial Court is, however, directed to make strenuous efforts for expediting the conclusion of trial.

23.12.2021

kamal

(Gurvinder Singh Gill)
Judge

Whether speaking /reasoned

Yes / No

Whether Reportable

Yes / No