

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

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CRM-M-17422-2021(O&M)
Date of Decision : July 27, 2021

VARUN JOSHI

.....Petitioner

VERSUS

STATE OF PUNJAB

.....Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present : Mr. Daljeet Singh Virk, Advocate for
Mr. Arshdeep Singh Brar, Advocate
for the petitioner.

Mr. Randhir Singh Thind, DAG, Punjab.

Mr. Rajesh Bhatheja, Advocate
for the complainant.

Through Video Conferencing

JASGURPREET SINGH PURI. J. (Oral)

CRM-18057-2021

This application has been filed by the petitioner for the grant
of interim bail.

The learned counsel for the petitioner has submitted that
since the main regular bail application is being taken up today, he does
not wish to press the present application for the grant of interim bail and,
therefore, prays for withdrawing the same.

Dismissed as withdrawn.

Main case

The present petition has been filed under Section 439 of the
Code of Criminal Procedure for grant of regular bail to the petitioner in

case FIR No. 69 dated 2.6.2020 under Section 376 IPC, Police Station Nihal Singh Wala, District Moga.

As per the allegations contained in the FIR which was lodged on the basis of statement made by the prosecutrix that around 10 years ago she married one Pardeep Singh and out of this wedlock she had a daughter who is about 5 years of age now. She has done a course of ANN and now she is posted in the Health Department at Maternity Centre at Himmatpura, District Moga. It is further stated that petitioner namely Varun Joshi son of Ashok Kumar is President of the Youth Congress Moga and he used to visit the above said dispensary for checking. In the second week of December 2019 when she was sitting alone in her office, he told her that he was having her photographs and videos depicting her having physical relations with other persons and threatened her to have physical relations with him and in case of refusal he threatened that he would put the said objectionable photographs and videos on internet and in that eventuality she will not be able to show her face in society. The prosecutrix further stated to him that she was not having any physical relations with any person and those photographs, if any, were edited by him which is now possible during the computer era. The petitioner also allegedly forced her to either develop physical relations with him or pay an amount of Rs. 5 lacs for deleting the objectionable photographs and videos. Thereafter, the petitioner started blackmailing the prosecutrix and finally settled the deal with her for Rs.4 lacs and for that amount, her mother borrowed a sum of Rs.2 lacs and another sum of Rs.2 lacs on 11th and 12th, December 2019, respectively, from her brother. They went to

the house of the petitioner in village Himmatpura and the petitioner was asked to delete the said objectionable contents from his mobile phone to which he said that he has deleted the same. However, on 25.4.2020, the petitioner came to her at Himmatpura Dispensary and said that he has deleted only half of the objectionable content from his mobile and in case she wanted the entire content deleted from his phone then she must pay him Rs.3 lacs more and asked her to come and sit in his car to settle the deal and he made her sit in his Innova car and drove towards Nihal Singh Wala and thereafter forcibly stripped her and committed sexual intercourse with her against her wishes and consent. But the prosecutrix did not raise any alarm as she was scared of being defamed in the society. The alleged incident took place on 25.4.2020 and the FIR in the present case was registered on 2.6.2020 and the petitioner was arrested on 16.7.2020.

Learned counsel for the petitioner has submitted that it is a case where the petitioner has been falsely implicated and was being framed up by the prosecutrix for ulterior motives. He has submitted that infact the prosecutrix had filed a petition CRM-M-14954-2020 before this Court seeking transfer of investigation to the Central Bureau of Investigation or to some other agency. In this petition , this Court on 6.10.2020 directed the Director General of Police, Punjab to constitute a team to be headed by officer not below the rank of Deputy Inspector General of Police and submit report to this Court within 30 days. Thereafter, a Special Investigation Team (SIT) was constituted consisting of an Inspector General of Police, Faridkot Range, Faridkot, Senior

Superintendent of Police Faridkot and Superintendent of Police, Ludhiana. This team also included one lady police official of the rank of Superintendent of Police. After the conclusion of inquiry by the SIT, status report was filed by way of an affidavit by the Inspector General of Police, Faridkot Range, Faridkot vide Annexure P-24 in which it was stated that no truth has been found in the allegations levelled by the prosecutrix as it was found that both of them i.e. the petitioner and prosecutrix have not gone to village Himmatpura on 11.12.2019. Further, on the basis of call locations of both the petitioner and the prosecutrix duly coupled with the statement of other witnesses it was found that on 25.4.2020 which is the date of the alleged occurrence both of them have been found present at village Cheema, District Barnala which is far away from distance of about 24 kilometers from the alleged place of occurrence. Furthermore, it was also found by the SIT that both the petitioner and the prosecutrix used to visit Jagraon at Hotel Sneh Mohan at Jagraon where they used to stay together and about 7 dates have been mentioned on the basis of inquiry conducted at the hotel where both of them stayed together on friendly basis from 13.12.2019 to 27.2.2020. Furthermore, as per the call locations of the prosecutrix and the petitioner no fact has come on record regarding their presence at the place of occurrence on 25.4.2020 and even from Forensic Science Laboratory, Mohali and analysis of the DNA sample the clothes of prosecutrix which were worn by her at the time of occurrence and that of the vehicle from the Forensic Science Laboratory, Mohali, neither any fact/evidence of rape of prosecutrix has been found nor any truth in the allegations of

giving of Rs.4 lacs to the petitioner by the prosecutrix in view of the deal of parties has been revealed. Thereafter, on the basis of the aforesaid SIT report, this Court vide Annexure P-27 dated 16.3.2021 dismissed the petition filed by the prosecutrix by observing that the proceedings initiated by the prosecutrix were false and frivolous and an attempt has been made to abuse the process of law and therefore, this Court had imposed a costs of Rs. 1 lac on the petitioner. Learned counsel for the petitioner has submitted that thereafter, on the basis of report of SIT the police has already submitted cancellation report and apart from the same an application has also been filed for discharge of the accused. He has submitted that the petitioner is not involved in any other case and he is in custody from 16.7.2020 which is more than one year and the investigation of the case is already complete and in view of the facts and circumstances of this case, he may be considered for the grant of regular bail.

Mr. Thind, learned Deputy Advocate General, Punjab has submitted that it is correct that the petitioner is in custody since 16.7.2020 which is more than one year and the petitioner is not involved in any other case and after the report made by the SIT, the police has already prepared a cancellation report and a discharge application has been filed by the police.

Mr. Rajesh Bhatheja, Advocate, learned counsel for the complainant has submitted that so far as the order passed by this Court vide Annexure P-27, whereby prayer of the prosecutrix for transfer of investigation was dismissed on 16.3.2021 by imposing a costs of Rs.1 lac

on her, the prosecutrix has already filed SLP before the Hon'ble Supreme Court but the same has not been listed as yet. He has submitted that even if the SIT has concluded against the prosecutrix and the police is about to file a cancellation report before the learned trial Court still the prosecutrix has a right to lodge a protest petition and therefore, has opposed the grant of regular bail to the petitioner.

I have heard the learned counsel for the parties.

The custody period of the petitioner which is more than one year is not in dispute. It is also not disputed that SIT was constituted in pursuance to the directions passed by this Court and the SIT has returned a finding that no offence is made out against the petitioner on the basis of detailed investigation conducted by the SIT. Thereafter the petition filed by the prosecutrix for transfer of investigation has been dismissed by a co-ordinate Bench of this Court on 16.3.2021 vide Annexure P-27 by imposing exemplary costs of Rs.1 lacs on her. The police on the basis of the report of the SIT, and as per learned State counsel, has already prepared the cancellation report which is to be filed before the learned trial Court and separate discharge application has also been filed by the police before the learned trial Court. The learned trial Court is yet to consider the cancellation report, if any, as well as the discharge application. Admittedly, the petitioner is not involved in any other case.

Therefore, taking into consideration the totality of the circumstances of the present case and without observing anything on the merits of the case, this Court deems it fit and proper to allow the present petition.

Consequently, the present petition is allowed and the petitioner is ordered to be released on bail on his furnishing of bail bonds and surety bonds to the satisfaction of concerned Chief Judicial Magistrate/Duty Magistrate.

(JASGURPREET SINGH PURI)
JUDGE

July 27, 2021
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Whether speaking/reasoned.	:	Yes/No
Whether Reportable.	:	Yes/No