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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M No.21080 of 2021 (O&M)

Date of decision: 03.06.2021

Sandeep

....Petitioner

Versus

State of Haryana

....Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Brijender Dhankar, Advocate
for the petitioner.

Mr. Gurmeet Singh, AAG, Haryana.

ARVIND SINGH SANGWAN J. (Oral)

Prayer in this petition is for grant of regular bail to the petitioner under Section 439 of the Code of Criminal Procedure (in short 'Cr.P.C.') in FIR No.54 dated 01.02.2021, for offence punishable under Sections 294, 354-A(ii), 376, 506 of the Indian Penal Code, 1860 (in short 'IPC'), 67 of the Information Technology Act, 2000 and Sections 3(i)(s)(w) and 3(2)(VA) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, (Section 328 IPC stands deleted) registered at Police Station Barwala, District Hisar.

Counsel for the petitioner has submitted that the petitioner is in custody for the last about 03 months and the investigation is complete and challan stands presented in the case.

Counsel for the petitioner has also submitted that the petitioner is not involved in any other or such case. It is further argued that as per the allegations in the FIR, registered at the instance of the

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victim, it is stated that she is a married woman having 02 children and her husband is a labourer. On 08.01.2021, she was having pain in her stomach and was standing on the bus-stand to take medicine from the hospital at Barwala. In the meantime, the co-accused Kuldeep came in his car and asked her to accompany him so that he can drop her in the hospital. When the victim sat in the vehicle of the co-accused Kuldeep, he gave her a tablet by saying that it is a pain killer and she got giddiness. After reaching Barwala, Kuldeep took her to cruz hotel and on her asking as to why he has brought her in a hotel instead of a hospital, Kuldeep took her inside and made forcible physical relations with her. Kuldeep, thereafter, took her nude photographs in his phone and threatened that in case, she disclosed the same, he would kill her, her husband and kids. Thereafter, Kuldeep made a phone call to Sandeep (petitioner herein) and facilitated a talk of the victim with Sandeep where the petitioner asked her to make physical relations with him or with a girl who is acquainted to her and upon refusal, the phone was disconnected. It is further stated that Kuldeep, thereafter, took the victim in his vehicle and by dropping her at the bus-stand, ran away by threatening her that if she disclosed anything to anyone, he would made the nude photographs viral.

Later on, the telephonic conversation between Kuldeep and the petitioner – Sandeep was made viral. It is further submitted that in the FIR neither there is any allegation of rape nor of commission of offence under the SC&ST Act.

Counsel for the petitioner has relied upon the statement of the victim recorded under Section 164 Cr.P.C., in which she has given a

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similar version as in the FIR and has not levelled any allegations of rape against the petitioner or calling her in the name of her caste. Counsel for the petitioner has also submitted that the allegation of taking nude photographs are against the co-accused Kuldeep, who is already arrested.

Counsel for the State has, however, submitted that the mobile phone recovered from the petitioner has been sent to the FSL along with the voice sample to find out whether the recording between the co-accused Kuldeep and the petitioner – Sandeep was of the same person or not.

On a Court query, counsel for the State could not dispute that the allegation of rape as well as taking nude photographs of the victim was not against the petitioner.

Without commenting anything on merits of the case, considering the fact that there is no direct allegation against the petitioner and even there is no allegation that the victim has ever met the petitioner as per the version given in the FIR and the statement recorded under Section 164 Cr.P.C. and also in view of the fact that the petitioner is in custody since 27.02.2021; the petitioner is not involved in any other case; the custodial interrogation of the petitioner is not required and the conclusion of the trial will take some time due to COVID-19 situation, this petition is allowed and the petitioner is directed to be released on bail subject to his furnishing bail/surety bonds to the satisfaction of the trial Court/Illaqa Magistrate/Duty Magistrate.

However, it will be open for the prosecution to apply for

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cancellation of bail of the petitioner, in case he is found involved in any other case or misusing the concession of bail, in any manner.

**(ARVIND SINGH SANGWAN)
JUDGE**

03.06.2021

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Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No