

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-29872-2020 (O&M)

Date of Decision: 29.01.2021

Rajinder Kumar @ Tinka

....Petitioner

Versus

State of Punjab and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present : Mr. Dinesh Trehan, Advocate,
for the petitioner.

Mr. H.S.Sitta, Assistant Advocate General, Punjab.

Mr. Munish Puri, Advocate,
for the complainant.

Through Video Conferencing

JASGURPREET SINGH PURI, J. (Oral)

CRM-29441-2020

This application has been filed for impleading the complainant-
Babli Saini as respondent No.2 in the array of parties.

Mr. Dinesh Trehan, learned counsel for the petitioner states that
he is now appearing as counsel for the petitioner and has already filed his
Power of Attorney in the Registry of this Court. He submits that the he has
no objection in case the applicant is impleaded as respondent No.2.

Mr. Sitta, learned AAG, Punjab has also stated that he has no
objection in case the applicant is impleaded as respondent No.2.

In view of the above, the present application is allowed. The
applicant is directed to be impleaded as respondent No.2 in the array of
parties. The amended Memo of Parties be taken on record.

Application stands disposed of.

CRM-29458-2020

This application has been filed for placing on record reply of complainant/respondent No.2.

For the reasons mentioned in the application, the same is allowed. Reply by way of affidavit of complainant/respondent No.2-Babli Saini is taken on record. The Registry is directed to tag the same at appropriate place and paginate it accordingly.

CRM-M-29872-2020

The present petition has been filed under Section 439 of the Code of Criminal Procedure, for grant of regular bail to the petitioner in FIR No.136 dated 21.07.2020, under Sections 376, 511, 457 and 506 of the Indian Penal Code, registered at Police Station Sadar Pathankot, District Pathankot.

As per the FIR, which was registered on the basis of a complaint made by respondent No.2, wherein she stated that on 29.06.2020 at 11:33 p.m., she received a mobile call from a person and she was alone at home and she asked the caller from where he was speaking. At about 12:30 a.m. midnight, she checked her mobile phone and there were 30-40 missed calls from above mentioned phone and thereafter, she picked up the call and the caller said that he likes her very much and wanted to meet her tonight and thereafter, he kept on calling. Thereafter, at about 02:00 a.m., the petitioner scaled the wall and entered her house when she was sleeping. Thereafter, he started knocking the door and then she noticed that the man was the petitioner whom she recognized because he was from her village

and she knew him from past. Thereafter, he threatened her and the complainant-prosecutrix called the son of her paternal uncle and requested him to come home immediately but the petitioner had entered the house after scaling the wall and on hearing the same, the petitioner started giving threats to her that if she called anyone on phone then he will do wrongful act with her and will also rape her. Then he pushed the door with force and broke the latch (kundi) and attempted to enter the room upon which she tried to push him when he caught hold of her arms and tried to pull her towards him. She pushed and threw him out and thereafter, she saved herself.

The learned counsel for the petitioner has submitted that the petitioner was falsely implicated in the present case and there was a delay of 24 days in lodging of the present FIR. He has further submitted that in the reply, which has been filed by the respondent no.2-prosecutrix, she has reiterated the allegation which she had made in the FIR but subsequently with the intervention of the respectable of the village, a compromise has been effected between the petitioner and respondent No.2 and for the said purpose, they have also filed a separate petition for the quashing of the FIR based upon the compromise. The learned counsel for the petitioner has further argued that on the face of it the offence under Section 376 IPC is not made out. The learned counsel for the petitioner further submitted that the petitioner is in custody since 21.07.2020 and the investigation of the case is complete and the challan has already been presented. He has further submitted that it is a case where no medical examination was conducted and there is nothing to be recovered from the petitioner and that now a compromise has been effected between the parties, he may be considered for

grant of regular bail.

On the other hand, the learned counsel for the State has submitted that the matter pertains to serious offence and the factum of compromise may not be taken into consideration for the grant of bail. However, the custody period of the petitioner is not disputed. It is also not disputed that the investigation of the case is already complete and the challan has already been presented in the Court.

The learned counsel for complainant-respondent No.2 has submitted that although in the reply, which has been filed in the Court, respondent No.2 has reiterated the allegations made in the FIR but later on a compromise was effected between the parties and therefore, he has no objection in case bail is granted to the petitioner.

I have heard the learned counsel for the parties.

In the present case, the custody of the petitioner is not disputed and it is also not disputed that the investigation of the present case is already complete and the challan has already been presented. So far as the compromise entered into between the parties is concerned, there is force in the argument raised by the learned counsel for the State that such kind of compromise cannot be permitted when such serious offence is alleged in the FIR.

However, while considering the grant of regular bail, the Court shall also consider other factors as to whether bail should be denied to the petitioner or not. In the present case, it is not a case of the State that in case the petitioner is released on bail then he may tamper with any evidence or he may influence any of the witnesses or that he may flee from justice.

Furthermore, investigation of the case is complete and challan has been presented in the Court.

Therefore, considering the totality and circumstances of the present case, I deem it fit and proper to allow the present petition. Consequently, the present petition is allowed. The petitioner shall be admitted to regular bail on his furnishing bail/surety bonds subject to the satisfaction of the learned trial Court/Duty Magistrate.

However, anything observed hereinabove shall not be treated as an expression of opinion on merits of the case and is meant for the purpose of deciding the present petition only.

29.01.2021
adhikari

(JASGURPREET SINGH PURI)
JUDGE

Whether speaking/non-speaking	:	Yes/No
Whether reportable	:	Yes/No