

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

214

CRM-M-8646-2022 (O&M)

Date of Decision: 10.02.2023

Dalbir

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Mr. Anshumaan Dalal, Advocate for the petitioner

Ms. Dimple Jain, AAG, Haryana

JAGMOHAN BANSAL, J. (ORAL)

1. The petitioner through instant petition under Section 439 of Code of Criminal Procedure, 1973 is seeking regular bail in FIR No.0205 dated 07.08.2021 (Annexure P-1) under Sections 376(2)(n), 384, 506 of Indian Penal Code, 1860 and Sections 66E, 67, 67A of Information Technology (Amendment) Act, 2008 registered at Police Station Lakhan Majra, District Rohtak.

2. The case of prosecution is that on 07.08.2021, the prosecutrix lodged complaint with police alleging that she got married with Rajbir son of Ramphal, 25 years ago and two sons were born out of this wedlock. One day, she went for urination in agriculture field and she put off her shirt because some insect had entered in her clothes. Dalbir Singh son of Zile Singh committed rape upon her as he told her that he is having her nude photographs. The accused demanded Rs. 10,000/- from her but she could not pay to him the said amount, thus,

accused Dalbir Singh made viral her obscene video. For last 5 years, he is committing rape upon her against her wishes.

3. Learned counsel for the petitioner, *inter alia* contends that prosecutrix is more than 40 years old lady and it was a consensual relation between the parties which is evident from the fact that the prosecutrix herself has stated that petitioner was committing rape upon her for the last five years. The prosecutrix stands examined and in her chief she had categorically stated that video of her private parts was prepared by her in her own mobile. She does not know that who has got the said video viral from her mobile and she has got registered FIR against the petitioner due to pressure of her family. The petitioner is not involved in any other offence. The petitioner has been wrongly implicated in the commission of alleged offence. The petitioner is permanent resident of District Rohtak. The petitioner has deep roots in the society. There is no possibility of flee from justice.

4. Custody Certificate dated 09.02.2023 is taken on record. Registry is directed to tag the same at appropriate place.

5. Learned State Counsel submits that police report has already been filed and charges stand framed. She further submits that out of 20 witnesses, 4 witnesses have already been examined which include prosecutrix. The petitioner is involved in the commission of grave offence, thus, no leniency is warranted and release of petitioner would hamper the trial.

6. Admittedly, the prosecutrix stands examined and she at the time of alleged offence was major. She in her chief has conceded that video was prepared in her own mobile and she does not know that who has made it viral. She has also conceded that she has lodged FIR under the pressure of her family. The petitioner is not involved in any other offence. The case of petitioner *prima facie* seems to be covered by judgments of Hon'ble Supreme Court in ***Uday Versus State of Karnataka, (2003) 4 SCC 46; Deelip Singh alias Dilip Kumar Versus State of Bihar, (2005) 1 SCC 88; Deepak Gulati Versus State of Haryana, (2013) 7 SCC 675; Dr. Dhruvaram Murlidhar Sonar Versus State of Maharashtra and Others (2019) 18 SCC 191*** and ***Naim Ahamed Versus State, (2023) Live Law (SC) 66***. The petitioner is in custody since 09.08.2021. There are 20 prosecution witnesses and till date, only 4 witnesses have been examined, thus, there is abysmally low possibility of conclusion of trial in near future. The material witness i.e. prosecutrix stands examined. As prosecution has right to arrest, investigate the matter and restrain an accused from manipulating or winning over witnesses, similarly accused in view of Article 21 of the Constitution of India has right to defend himself and put forth his stand which cannot be possible while in custody. The prosecution has not led any convincing/plausible documentary or oral evidence indicating possibility of Petitioner being flee from justice or tempering the evidences or winning over/threatening the witnesses.

7. In view of aforestated facts and circumstances, this Court is of the considered opinion that present petition deserves to allowed and accordingly allowed. The petitioner is ordered to be released on bail subject to conditions as may be imposed by Trial Court/Illaq/Duty Magistrate concerned.

Nothing observed hereinabove shall be construed as expression of opinion of this Court on merits of the case and Trial Court shall proceed without being prejudiced by observations of this Court.

(JAGMOHAN BANSAL)
JUDGE

10.02.2023
Mohit Kumar

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>