

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

205

Criminal Misc. No. M-11675 of 2023

Date of decision :-12.10.2023

Gurwinder Singh @ Gaggu

.....Petitioner

Versus

State of Punjab and another

.....Respondents

CORAM:- HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Yashpal Thakur, Advocate
for the petitioner.

Mr. Jaswinder Singh Arora, DAG, Punjab.

NIDHI GUPTA J. (Oral)

Prayer in this petition filed under Section 439 Cr.P.C. is for grant of regular bail to the petitioner during pendency of the trial in case FIR No.137 dated 25.10.2022, under Sections 376, 506 and 509 IPC, registered at Police Station Khamano, District Fatehgarh Sahib.

The FIR has been recorded on the basis of statement of the victim/complainant, who was 25 years of age at the time of alleged incident. The contents of the FIR reads as under :-

“Stated that I am a resident of the said address and do domestic work, I was married in 2014 with Mandeep Singh son of Sudagar Singh resident of

village Manaula, PS: Khamanon District Fatehgarh Sahib and I am also blessed with Girl child namely Husanpreet Kaur aged 5 years further due to matrimonial dispute with my husband for last 4 years, I am residing at my paternal home along with my daughter with my mother namely Sarabjit Kaur at village Lakhanpura, my mother often remained sick, therefore I work in MANREGA at my village to manage my household expenses. That on dated 4.8.2022, I along with other ladies working in MANREGA, were going to Naina Devi Temple by train further during journey one person sitting on the seat next to me asked my name and whereabouts and he also disclosed his name as Gurwinder Singh @ Guggu, resident of village Kheri Noch Singh further also we reached at Naina Devi Temple, while talking with each other. That after reaching at Naina Devi Temple, he asked me for my mobile number but I refused to give him my phone number. Then I along with my co-worker women returned back at my home village Lakhanpur by bus on the second day. Then on 08:08:2022, I received a call from mobile number 62393-99062 at my mobile and he disclosed his identity as Gurwinder Singh alias Gaggu further he told he want to marry me but I clearly refused him and disconnect mobile call, then he started calling me and my mother from different mobile numbers and I tried to make him understand but he did not understood. Then on 20-10-2022 around 5:30 PM, after doing MANREGA work, I was cutting grass at Mansoorpur village meantime above said Gurwinder Singh alias Gaggu came on motorcycle and he start abusing

and threaten me. Then Gurvinder Singh @ Gangu forcibly hold my arm, then he forcibly took me to the field where Chari/Grass was planted, he against my wish forcefully removed my clothe (Pajami) and despite of my refusal Gurvinder Singh alias Gaggi forcibly raped me against my will and further he also threatened me while leaving, on saying now you are mine and told me to marry him. That kindly take legal action against him, today I along with my mother Sarabjit Kaur were coming to record my statement but on the way I met yourself, further I recorded my statement same was read over and found correct.”

Learned counsel for the petitioner *inter alia* submits that the allegations made against the petitioner are patently false and fabricated. Learned counsel refers to the observation of the learned trial Court in para 10 of its order dated 25.1.2023 with respect to the statement suffered by the victim, which reads as under :-

“10. Meaning thereby the victim while suffering in the court on notice on the bail application has altogether twisted the facts by stating that it is not the bail-applicant who had committed rape upon her on 20.10.2022, but some unknown person, whose name she has not disclosed, whereas the matter had already been investigated and report under Section 173 Cr.P.C. stood filed before the Court of learned Magistrate, although not been committed so far. It is observed that trial of the case yet to begin on receipt of the case by way of commitment. It becomes matter of ponderance during trial as to which of the statement of victim has to be believed as she had given totally

inconsistent statement in the court at the time of bail application.”

It is submitted that accordingly the victim herself has categorically acknowledged that it was not the petitioner herein who committed rape upon her, rather some unknown person had committed rape upon her. It is submitted that even as per the medico legal report, no injury was found to have been inflicted upon the person of the victim. Learned counsel further submits that the complainant is a married lady having a child of five years of age.

Learned State counsel has filed the DNA report dated 30.12.2022 and the custody certificate of the petitioner dated 11.10.2023 in Court today. The same is taken on record. Copy thereof is supplied to the counsel opposite. As per the said custody certificate, the petitioner has been in custody as undertrial for a period of 11 months and 18 days. Learned State counsel opposes the prayer for grant of regular bail to the petitioner, however, admits that as per FSL Report presence of human semen was not confirmed on the exhibits; and as per DNA report, human semen of the petitioner was not detected on the exhibits submitted by the complainant/victim.

I have heard learned counsel for the parties and gone through the case file carefully.

Without commenting on the merits of the case, however, keeping in view the totality of facts and circumstances of the case, including the fact that the trial of the case is likely to consume considerable time; and the custodial period of the petitioner; and the fact that as per the said custody certificate, there is no other case pending against him, hence, further custody of the petitioner may not

be justified. Therefore, without meaning any expression of opinion on the merits of the case, it is ordered that the petitioner-Gurwinder Singh @ Gaggu s/o Manjeet Singh be released on regular bail subject to his furnishing requisite bail bonds/surety bonds to the satisfaction of the trial Court/Duty Magistrate, concerned.

The petition is allowed.

October 12, 2023

Vijay Asija

(NIDHI GUPTA)
JUDGE

Whether speaking/reasoned Yes / No

Whether Reportable Yes / No