

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M 26648/2023

Date of decision: 02.08.2023.

Sarfraz Khan

.....Petitioner

Vs.

State of Haryana

.....Respondent

CORAM HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Gautam Dutt, Advocate and
Mr. Saurabh Sharma, Advocate for the petitioner.

Mr. Brijesh Sharma, AAG Haryana

Mr. Ritesh Tomar, Advocate for the petitioner.

Nidhi Gupta, J.

Prayer in this first petition under Section 439 Cr.PC is for grant of regular bail in case FIR No. 0012 dated 5.2.2023 under Section 376(2)(n) IPC (Section 506 IPC added later on), registered at PS Women Police Station, Faridabad, Distt. Faridabad.

Above said FIR (Annexure P-1) was registered on the basis of the statement of the prosecutrix, and reads as under:-

"To the 1) DCP Faridabad, Haryana, 2) The SHO P.S. Women, Sector 16, Faridabad, Haryana - 121001, 3) The ACP Crime Against Women, Faridabad, Haryana. Subject: Complaint against Sarfaraz Khan s/o Sh. Abdul Salam, r/o A-1301, Emerald Heights, Sector 88, Faridabad to commit rape with the complainant on the pretext of marriage, breach of trust also threatened her to face dire consequences if she filed any complaint against him, 9910098437. Respected Sir, With

due respect, I want to draw your kind notice that I am K. Ahmed d/o Sh. Fazaluddin Ahmed, r/o H.No.13, Ward No.1, Satguru Apartment, Mehrauli, New Delhi-110030. Me and Mr. Sarfaraz Khan s/o Sh. Abdul Salam, r/o A-1301, Emerald Heights, Sector 88, Faridabad, Haryana were working in a same company and he proposed me in the month of Dec. 2022 and he insisted me to developed relationship with him and when I objected the same then he said that I want to marry with you. It is pertinent to mention here that I have already disclosed the fact to the above said Sarfaraz Khan that I am divorcee and single mother of child (aged about 05 years), who is mentally disabled. Sir, it is pertinent to mention here that above said Sarfaraz Khan took me at his residence i.e. A-1301, Emerald Heights, Sector 88, Faridabad, Haryana in the month of December 2022 and make physical relations with me without my consent on the pretext of marriage. Sir, now the said Sarfaraz flatly refused to marry me and threatened me to face dire consequences if I have made any complaint against him. He also threatened me that if I have complained against him then he will implicate me in false and frivolous cases. I am enclosing the Whatsapp chat in which he often used to say "I love u a lot my Jaan my wifey". It is, therefore, requested that necessary action may kindly be taken against the above said Sarfaraz in accordance with law as he raped me without my consent on the pretext of marriage. Thanking you, Yours faithfully”

It is inter alia submitted by the Id. counsel for the petitioner that the complainant has implicated the petitioner in a wholly false case. Ld. Counsel contends that the alleged incident is of December 2022, however, FIR has been lodged three days thereafter only on 05.02.2023. It is stated that there is no explanation on record for this delay. Ld. Counsel submits that the FIR has been lodged with a mala fide intention to take undue benefit, as the petitioner and complainant are colleagues. It is stated that the complainant is

aged 33 years and is a divorcee who has been married thrice before and has a child of about 5 years. Ld. Counsel submits that the petitioner got to know the complainant only about three months prior to lodging of the FIR, and that it was consensual relationship between the petitioner and the complainant.

Ld. counsel further contends that the complainant is habitual of making false complaints and blackmailing people. It is submitted that prosecutrix has registered as many as 8 FIRs of similar nature, against several others including other office colleagues, as also against her former three husbands. Ld. counsel submits that the details of the other FIRs are as follows:

S.No.	Victims	Relation	Sections	FIR No.
1	Amarjeet Singh Chouhan	Office colleague	376/328 IPC	FIR 156 PS Kalkaji dt. 1.4.2010 Acquitted in judgment dt: 25.10.2016
2	Gurvinder Singh	Office colleague	354/354-B/324 IPC	FIR No.1099 PS Malviya Nagar dt: 19.8.2014
3	Mayank Ahuja	Office colleague	376/377 IPC	FIR No.495 PS: Malviya Nagar in 2015 CRL.REV.P. 75/2016 & CRL.M.A. 1708/2016
4	Naveed Anjum	Facebook friend	385/389/506 IPC	FIR NO.1674 PS Malviya Nagar dt: 1.9.2015. She wanted to implicate him in a false rape case and demanding extortion money. He mentions this in FIR.
5	Abhinav	First husband	498-A, 406, 34 IPC	FIR No. 1514/14 Vasant Vihar, PS New Delhi. One petition filed by her in DV Act
6	Yunus Ali Lone	Second husband	156(3) IPC	Tried to implicate him in false cases. Khubtarin Ahmed v SHO (Malviya Nagar) Case No. CT-4827/18. FIR 7. Not registered.
7	Rafiqur Rehman	Third husband	498A/377/342/354-B/325/326/307/34 IPC Section 67 IT Act	FIR No. 3145 PS Nagaon Assam dt: 8.12.2021. She was not able to produce any divorce certificate with him

8	HDFC Bank		Section 138 NI Act	Disposed due to address not found to summon the accused. CC No. 13622/17
9	Sarfaraz Khan	Office colleague	376/506 IPC	FIR No.12/2023 dt: 05.02.2023 Women PS Faridabad.

Ld. Counsel for the petitioner states that in similar FIR No.156 dated 1.4.2010 under Sections 376/328 IPC, PS Kalkaji accused Amarjeet Singh Chauhan has been acquitted by Addl. Sessions Judge, Special Fast Track Court, Saket Courts, New Delhi vide judgment of acquittal dated 25.10.2016. Ld. counsel refers to observations of the trial Court as contained in para 25 of said judgment of acquittal dated 25.10.2016 which reads as under:-

"25. It is also relevant to mention that the prosecutrix had filed three complaints after the incident against different persons. The accused in his defence has placed on record the copy of the chargesheet of the case FIR no. 495/15 registered as the police station Malviya Nagar u/s 376/377 IPC Ex.DW1/A. In that complaint, she has made similar allegations against Mayank Ahuja who was also her office colleague. In that complaint, she. had alleged that on 25.12.2014, he came in her house with wine. After drinking, he asked her to get physical and when she refused, he shouted that they were going to get married. He then forced himself on her. On 10.01.2015, he again forced her to have physical relations with him. He made her believe that they were going to marry soon. He started establishing physical relations with her many times. It is strange that the prosecutrix did not learn from the past and agreed for the physical relations with Mayank even before marriage on his promise that he would marry her".

It is further submitted that the petitioner is sole bread earner of the family and has two daughters aged 9 years and 4 years whom he has to

look after. It is further submitted that there is also one extortion case against the complainant.

On the other hand ld. counsel for the complainant submits that examination-in-chief of the complainant has been done wherein she has supported the case of the prosecution. Ld. Counsel prays that the matter be adjourned to complete the cross-examination of the complainant. It is further submitted that there is no question of extortion as the prosecutrix is earning Rs. 2 lac per month. It is further submitted that there is evidence in the form of WhatsApp chat between the prosecutrix and petitioner to show that petitioner had promised to marry her and even adopt her child. It is further submitted that consent attributed to the prosecutrix is a matter of trial.

Status report by way of affidavit of Monica, HPS, Asstt. Commissioner of Police, Women Safety, Faridabad, and Custody certificate dated 19.7.2023 produced by ld. State counsel is taken on record.

Ld. State counsel submits that as per custody certificate dated 19.7.2023 petitioner is in custody since 24.2.2023 i.e. for a period of four months and 26 days. He further submits that out of 16 prosecution witnesses only one witness has been examined so far, and thus, opposes the prayer for grant of bail. It is further submitted that there is sufficient evidence against the petitioner.

After hearing ld. counsel for the parties, without commenting on the merits of the case, and keeping in view the fact that petitioner is in custody since 24.2.2023, 15 prosecution witnesses remain to be examined and thus, conclusion of trial will take time, and in the meantime no useful purpose would be served by keeping the petitioner in custody, the present petition is

allowed. The petitioner Sarfraz Khan son of Abdul Shadul Salam is ordered to be released on regular bail on his furnishing bail/surety bonds to the satisfaction of CJM/Duty Magistrate concerned.

02.08.2023.
Joshi

(Nidhi Gupta)
Judge