

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARHCRM-M 31379/2022
Date of decision: 27.07.2023.

Pankaj Kumar

.....Petitioner

Vs.

State of Punjab

.....Respondent

CORAM HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Prateek Pandit, Advocate for the petitioner.

Mr. Jashanpreet Singh, DAG Punjab

Nidhi Gupta, J.

Petitioner Pankaj Kumar son of Kapil Dev Mehta in his first petition under Section 439 Cr.PC seeks regular bail in case FIR No. 257 dated 15.8.2021 under Section 376 IPC, PS City Kapurthala, District Kapurthala.

FIR in this case was registered on the statement of prosecutrix which reads as under:-

"Statement of Sandeep Kaur, wife of Sukhwinder Singh, resident of aged about 25 years, presently resident of Stated that I am resident of above said address and doing work of labor. Few years back my marriage was solemnized with Sukhminder Singh. I have 2 children from this wedlock. Before 4 years my husband ran away with some girl by leaving me and children. Now I am residing in the house of Pankaj Kumar S/O Kapil Dev Mahato R/O Street No.2, Nirotam, Vihar Kapurthala on rent from 3 months. Today on dated 15.08.2021 at about 1 PM, when my children were not

present in the house, upon seeing me alone, Pankaj Kumar forcefully came into my room and closed the door. When I asked him immediately he pressed my face. Forcefully he took off my pajama and forcibly make physical relation with me. Strict legal action should be taken against the above said Pankaj Kumar”.

It is inter alia submitted by the ld. counsel for the petitioner that the petitioner has been falsely implicated in the present matter. Learned counsel contends that the very identity of the prosecutrix is in dispute as she has lodged the FIR by stating herself to be ‘Sandeep Kaur wife of Sukhminder Singh aged about 25 years’; however, when the prosecutrix was asked to show her identity proof before the police, she confessed that in fact, her real name was Ditta Khatun wife of Mohd. Khatim Ansari, and she produced her Aadhaar card (Annexure P-2), as per which she is 28 years old, and resident of Rajokhar, Aanchal Araria, near Masjid Ward No.5, Bihar. It is also submitted that prosecutrix refused to undergo medical examination which fact is recorded in the report under section 173(2) Cr.PC; and that as per her affidavit (Annexure P-5) she has admitted that there was a money dispute between the petitioner and prosecutrix and it is for this reason that prosecutrix lodged a totally false and baseless FIR against the petitioner. Ld. counsel further submits that it is a false case, identity of the prosecutrix is false and not established on record, and her age is also false. Ld. counsel then refers to zimni order dated 4.3.2022 (Annexure P-7) passed by the trial Court to submit that now the prosecutrix is not coming forward to give evidence as summons issued to victim were received back with the report that she is not residing at the given address. It is submitted that it is recorded in the said order that summons issued to other witnesses have also been received back unexecuted.

It is further submitted that date of alleged incident is 15.8.2021, and petitioner was arrested on 16.8.2021 and petitioner is in custody since then.

Custody certificate dated 26.7.2023 produced by the ld. State counsel is taken on record.

Ld. State counsel though opposes the prayer and submits that prosecutrix in her statement under Section 164 Cr.PC supported her complaint but is unable to dispute the aforesaid facts. It is further submitted that the petitioner has undergone 1 year 11 months and 13 days. It is also not disputed that the prosecutrix is not traceable and has refused medical examination.

After hearing ld. counsel for the parties, without commenting on the merits of the case, the present application is **allowed**, and petitioner is ordered to be released on bail on his furnishing bail/surety bonds to the satisfaction of CJM/Duty Magistrate concerned.

27.07.2023.
Joshi

(Nidhi Gupta)
Judge