

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M 35916/2022

Date of decision: 18.07.2023.

Balraj

.....Petitioner

Vs.

State of Haryana

.....Respondents

CORAM HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Deepak Vashisht, Advocate for the petitioner.
 Mr. Brijesh Sharma, AAG Haryana

Nidhi Gupta,J.

Petitioner in this first petition under Section 439 Cr.PC seeks regular bail in case FIR No.51 dated 18.2.2021 under Sections 376(2)(N) and 506 IPC (Section 384 IPC deleted later on) registered at PS Uchana, District Jind (earlier registered as Zero FIR at Karnal having FIR No.20 u/s 376(2)(N), 384 and 506 IPC, PS Women Police Station Karnal and later on transferred to Jind with present FIR Number).

As per allegations in the FIR complainant/ prosecutrix was married with Krishan in the village Keodak, Distt. Kaithal. She had accompanied her husband for some work at Uchana. There the petitioner-accused Balraj being friend of her husband used to come and was having an evil eye over her. Her husband used to travel for work, sometimes for months. Even in his absence petitioner/accused Balraj used to come to her home. When she resisted, then petitioner/accused Balraj threatened her. One day in the absence of her husband, petitioner/accused Balraj criminally trespassed in

her house and committed rape upon her against her wishes and also clicked her videos and photos. Accused also threatened her that if she would disclose about this act, then he would put all those videos and photos on Internet. Under said threat accused kept on committing rape against her wishes and also directed her to call him when her husband went outside for work. Petitioner/accused Balraj in the absence of her husband also threatened her to have sexual relationship with other persons who accompanied with him under the influence of liquor/alcohol. The petitioner/accused also blackmailed her and snatched two rings of her and her husband, her mangalsutra etc. total value of Rs.80,000/- approximately, alongwith the documents of her marriage and cash. The petitioner/accused also forced her to make the payment of installment of his motorcycle. In December 2020, petitioner again committed rape with her and on 03.02.2021 she felt pain in her abdomen and thereafter she went to Metro Hospital, Jind and undergone for ultrasound, there she was informed about her pregnancy. She tried to tell about the same to petitioner but he threatened that if she would disclose about this fact, then she would be eliminated and would also make all her photos and video viral on Internet. Prayer was made for taking legal action against accused.

It is inter alia submitted by the Id. Counsel for the petitioner that victim is married lady of 34 years whereas petitioner is only 25 years. Ld. Counsel submits that though in the FIR victim had alleged that the petitioner had taken an amount of Rs.80,000/- from her, but during investigation this allegation was found false and offence under Section 384 IPC was deleted and petitioner was charged only under Section 376(2)(N) and 506 IPC while submitting final report under Section 173(2) Cr.PC.

It is further submitted that contrary to the allegations in the FIR, no phone containing incriminating material was recovered from the petitioner and even no video or photographs have been placed on record to prove the allegations made in the FIR. It is stated that even as per MLR there is no injury on the body of the prosecutrix and there are no marks of struggle. It is further submitted that though alleged incidents pertain to the year 2020, or even prior to that, however, FIR has been registered only on 18.2.2021 after a delay of more than one year. It is further submitted that even no specific dates have been mentioned in the FIR.

Ld. Counsel further contends that it has been alleged that when the petitioner committed offence under Section 376 IPC each time the victim was sleeping adjacent to her children. Ld. Counsel submits that, despite that, the complainant/prosecutrix never raised any hue and cry. It is then submitted that on the face of it only the said story seems highly improbable however, the victim has sought to make improvements in her story each time. It is further submitted that the petitioner is in custody since 13.3.2021.

Custody certificate dated 17.7.2023 has been produced in Court today which is taken on record.

Ld. State counsel while opposing the prayer made on behalf of the petitioner is unable to deny the submissions made by the ld. Counsel for the petitioner; and further submits that 13 out of 17 witnesses have been examined, and the complainant has supported the prosecution case in her testimony.

I have heard ld. Counsel for the parties.

Without commenting, on the merits of the case, however, keeping in view the totality of the facts and circumstances, in particular, the fact that the petitioner is in custody since 13.3.2021, i.e. since the last 2 years 04 months and 05 days, and case is still at the stage of prosecution evidence, the present petition is **allowed** and petitioner is ordered to be released on bail on his furnishing bail bonds/surety bonds to the satisfaction of CJM/Duty Magistrate concerned.

However, nothing stated above shall be taken as an expression of opinion on the merits of the case.

18.07.2023.	(Nidhi Gupta)
Joshi	Judge
Whether speaking/reasoned	Yes
Whether reportable	Yes/No