

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M 36911/2023

Date of decision: 04.08.2023.

Pardeep Kumar @ Fouji @ Pardeep Goswami

.....Petitioner

Vs.

State of Haryana

.....Respondent

CORAM HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Raghav Sharma, Advocate for the petitioner.

Mr. Brijesh Sharma, AAG Haryana

Nidhi Gupta, J.

Prayer in this petition under Section 439 Cr.PC is for grant of regular bail in case FIR No.009 dated 28.2.2023, PS Women Police Station, Kurukshetra under Section 323,34, 376, 427, 506 (Section 201, and 376(2)(n) added later on) of IPC.

FIR (Annexure P-1) in this case was registered on the basis of statement of victim, which is reproduced hereunder:-

“Copy of complaint is attached alongwith- To-Superintendent of Police, Kurukshetra, Subject- Complaint to intitute legal action against Pradeep Goswami S/o Sukhbir Goswami R/o Village Tikri Tehsil Pehowa Distt. Kurukshetra Nirmala (Mother) M No. 8059131150 Sir, it is prayed that I am Rajni Devi w/o Kirpal Singh r/o Village Tikri Tehsil Pehowa Distt. Kurukshetra and pray as under 1. That I am resident of aforementioned address and I am a peace loving and law-abiding lady 2. That my husband is locked inside District Jail Kurukshetra and I live alone at home with my children aforementioned accused forcibly committed rape

with me and made my inappropriate video and threatened me that if you tell about this to anybody then I will viral your video. Because of which in order to save my dignity I kept on following him. Then I cleverly made his recording and video. On 21.01.2023, the accused went away after doing illicit act with me and told me that if you tell about this to anybody then I will kill your children and this accused always used to black mail me. I always used to beg him but he never heard me and kept on threatening me to kill. 3. That Kulwinder, Maina, Aman and their mother Nirmala Village Tikri beat me on 25.02.2023 and made my video and threatened me that do whatever you want to do. 4. That I told everything about the aforesaid accused to their family, then they said that if you have to do anything about it then do, their family is also involved with him On 25.02.2023 at 8.00 Pm the aforesaid accused called me at his home and said that take your phone, when I went to their home then they all started beating me and started pressing my neck through chunni then at the spot I called 112 then police came at the spot then mother, brother and sister in law of aforesaid accused in front of police his brother Kulwinder threatened me and said that what have you come here for again and Pradeep Goswami ran away from there. Thereafter police called me and aforesaid accused to Pehowa Police Station and they did not say anything in front of Police and then they said that they will give the money now as they earlier gave to the SH and police cannot do anything to us because we have power of money.5. That on 26.02.2023 I could not get my medical done and today on 27.02.2023 I got my medical done in Pehowa Government Hospital6. That the aforesaid accused defamed me in the whole village because of which I cannot live in the village as well. Villagers have started saying me bad things because of which I am mentally very sad and harassed .7. That the mother of accused Nirmala and sister-in-law Aman came to my house and threatened me, I have proof of the same.8. That at this time I

have no phone as Pradeep broke my phone and my both sim cards are with Pradeep Goswami. Hence it is prayed that strict legal action be taken against the accused and I may be deleivered justice and my life be protected from the accused. It would be very kind of you. Dt. 27.02.2023 Sd/- Rajni Devi applicant Rajni Devi w/o Sh Kirpal Singh r/o village Tikri The. Pehowa. Distt. Kurukshetra”

Ld. counsel for the petitioner inter alia submits that the victim/complainant is a 32-year-old mother of four children whose husband is in jail and in his absence the victim entered into a consensual relationship with the petitioner. Ld. counsel submits that the prosecutrix filed the present FIR only because the petitioner married someone else on the asking of his family. Learned counsel further submits that the prosecutrix has turned hostile. In this regard learned Counsel refers to deposition of the prosecutrix/PW2 (Annexure P-2), dated 6.7.2023 wherein she has clearly admitted the above facts. The relevant extract of the deposition of prosecutrix reads as under:-

“Stated that I have three daughters and one son. All my children are studying.

I was in love with the accused Pardeep present in the Court. I met him 1.75 years ago. Then the family members of the accused solemnized his marriage against his wishes. Accused has assured me that he will not cheat me. The family members of the accused called me and they had a scuffle with me. I tried to make them understand but they did not listen. The elder brother of the accused had prepared a video of beatings being given to me. The accused has not committed any wrong act with me at any point of time”.

Custody certificate dated 3.8.2023 produced by ld. State counsel is taken on record as per which petitioner is in custody since 18.3.2023 and has thus suffered incarceration of 04 months and 16 days.

Ld. State counsel opposes the prayer for grant of regular bail and submits that the allegations against the petitioner, as recorded in the impugned order dated 11.7.2023 (Annexure P-3), are serious in nature whereby the prosecutrix has alleged that the petitioner has forcibly committed rape upon the victim and had prepared an obscene video and had also threatened to kill her if she disclosed it to anyone.

In response, ld. counsel for the petitioner submits that, however, the deposition of the prosecutrix as PW2 is undeniable wherein she has admitted that she was in a consensual relationship with the petitioner. Learned counsel submits that accordingly, offence as charged is not made out.

After hearing ld. counsel for the parties, however, without commenting on the merits of the case, and keeping in view the fact that petitioner is in custody since 18.3.2023; trial is likely to take time to conclude and no useful purpose would be served by keeping the petitioner in custody, the present petition is **allowed**. The petitioner is ordered to be released on bail on his furnishing bail/surety bonds to the satisfaction of CJM/Duty Magistrate concerned.

04.08.2023.
Joshi

(Nidhi Gupta)
Judge