

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

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Criminal Appeal No.S-2315-2023

Date of decision :-11.09.2023

Kasif

.....Appellant

Versus

State of Haryana and another

.....Respondents

CORAM:- HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Wazir Singh, Advocate
for the appellant.

Mr. Arjun Lakhanpal, Addl. A.G., Haryana.

Ms. Nidhi Sharma, Advocate
For respondent No.2/complainant.

NIDHI GUPTA J. (Oral)

The present appeal has been filed by the appellant against the order dated 03.6.2023 passed by learned Additional Sessions Judge, Fast Track Special Court (POCSO), Panipat, whereby the application filed by the appellant herein under Section 439 Cr.P.C. for grant of regular bail during pendency of the trial, has been dismissed.

The present FIR has been registered on the complaint of the complainant/mother of the victim girl. Brief facts of case, as noted by the learned trial Court, read as under :-

“Briefly, the case of the prosecution is that on 23.07.2022, complainant/mother of the victim girl came present in the Police Station and presented a written complaint to the effect that her daughter/victim, aged 17 years was student of Girl

Public School. Her daughter told her that applicant-accused Kasif chat with her on mobile and thereafter started made telephonic call. When her daughter refused to communicate with applicant-accused, then he cut his veins and emotionally blackmailed her daughter. He trapped her daughter in his sweets words and called her daughter to meet them. On 29.10.2021, he called her daughter/victim and took her in Bishan Sarup Colony at Jewells Hotel and forcibly committed rape upon her against the wishes of her daughter and also made video and photos. The applicant-accused started to blackmail her daughter to see the said nude videos and photos and called her to meet him. Her daughter did not tell to anyone due to fear and applicant-accused called her daughter and giving her false assurance of marriage and committed forcibly raped upon her. The applicant-accused extorted money from her daughter. When her daughter asked him to solemnize marriage, then he told that 'Me Chude Chamaro se Shadi Nahi Karta' and said that he will solemnize marriage with her after conversion of religion of her daughter and also said that he will sent her daughter at U.P. State. He did this all for fun and he never intended to marry her. The applicant-accused gave threatened to her daughter if she told about it to anyone, he will kill her and her father. He committed rape upon her daughter by inducing her for solemnization of marriage. She requested to take legal action against him. On the basis of complaint, FIR in the present case was registered."

Learned counsel for the appellant *inter alia* submits that the prosecutrix was 17 years of age at the time of alleged incident. It is submitted that the appellant and the prosecutrix were in consensual relationship. Learned counsel submits that the prosecutrix in her deposition (as PW1) admitted the fact that “.....*We were friends and used to talk with each other prior to meeting in Insaar Bazar..... It is correct that I wanted to marry with accused Kashif but when he started blackmailing me, I became against him*”. Learned counsel for the appellant with regard to the allegations made by the complainant that the appellant had blackmailed the prosecutrix on the pretext of her nude photographs and videos made by him, submits that the prosecutrix in her deposition also submits that “....*There are no such photographs or video on the case file which my mother showed me. I do not remember the date.*” It is stated that even as per MLR, there are no external or internal injuries found on the person of prosecutrix. Learned counsel submits that the date of alleged incident is 29.10.2021, however, the FIR was registered on 23.7.2022 i.e. about eight months after the incident. It is submitted that the petitioner is in custody since 24.7.2022 and there is no other case registered against him and completion of the trial will take long time as out of total 17 prosecution witnesses, only six witnesses have been examined so far including the material witness.

Learned State counsel could not produce the custody certificate of the appellant in the matter and even the Investigating Officer is also not present in the Court. However, learned State counsel opposed the prayer of the appellant on the ground that there

are serious allegations of blackmailing the prosecutrix on the pretext of nude photographs and videos.

Ms. Nidhi Sharma, Advocate has put in appearance on complainant/respondent No.2 and filed her Power of Attorney, which is taken on record. She opposed the grant of bail to the appellant on the ground that serious allegations have been levelled against him.

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

Without commenting upon the merits of the case, however, keeping in view the fact that the material witness in this case have been examined, and conclusion of the trial will take long time as out of total 17 prosecution witnesses, only six have been examined so far, further custody of the appellant is not justified. Therefore, it is ordered that the appellant-Kasif s/o Aamir @ Amir 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.

September 11, 2023
Vijay Asija

(NIDHI GUPTA)
JUDGE

Whether speaking/reasoned Yes / No
Whether Reportable Yes / No