

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

209

Criminal Misc. No. M-44124 of 2023

Date of decision :-12.09.2023

Dalip Kumar

.....Petitioner

Versus

State of Haryana

.....Respondent

CORAM:- HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Naresh Kumar Ganga, Advocate
for the petitioner.

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

Mr. Robin Lohan, Advocate
For the complainant.

NIDHI GUPTA J. (Oral)

Prayer in this petition filed under Section 439 Cr.P.C. is for grant of regular bail to the petitioner during pendency of the trial in case FIR No.239 dated 03.9.2022, under Sections 328, 376(2)(n) and 506 IPC, registered at Police Station Ding, District Sirsa.

The FIR has been registered on the statement of complainant/victim. The brief facts, as recorded by the learned trial Court, reads as under :-

“According to the complaint dated 03.09.2022 of the complainant, she lives at home because she has been suffering from arthritis for the last 11 years. She has undergone operation twice for xanthosis and stomach diseases and she has been taking medicines for the same. Her neighbour

Dalip Kumar was on visiting terms at her house and on various occasions, she got the medicines brought from Dalip Kumar, who had brought proper medicines for her twice/thrice. But on 20.05.2022, she made an order for fetching medicines for arthritis through Dalip Kumar as nobody was present in her house to bring said medicines. Dalip Kumar brought the said medicine and asked her to collect the medicine from his shop. At about 1.30/2.00 PM, the complainant went to the shop of Dalip Kumar to collect her medicines and there Dalip Kumar asked her that today he has brought some special medicine for her and after taking it, her pain of arthritis would vanish away within five minutes. However, after taking the said medicine, the complainant became unconscious. Dalip Kumar put off her clothes in his shop and committed rape upon her forcibly. When she regained some consciousness, she raised objection for doing wrongful act against her but Dalip Kumar asked her that he had made her video in his mobile while doing wrongful act with her and also clicked her nude photograph and that if she told about the incident to anyone, he would viral the same and would defame her and also threatened to kill her. He committed rape upon her repeatedly under the threat of making viral her video and photograph and he also threatened to do wrongful act against her time and again. Out of fear and due to her disease, she remained under depression for some time but later on, she mustered some courage and told about the incident to her sister Kanchan and brother-in-law Chet Ram.”

Learned counsel for the petitioner *inter alia* submits that the allegations made in the FIR are false and fabricated and that the petitioner has been exonerated in the inquiry conducted by the concerned Deputy Superintendent of Police as reflected from the report under Section 173 Cr.P.C. (Annexure P-2).

Learned State counsel has filed the custody certificate dated 11.9.2023 in Court today. The same is taken on record. Copy thereof is supplied to the counsel opposite. As per the custody certificate, the petitioner has been in custody from 3 months and 29 days.

Learned State counsel submits that the petitioner used to bring medicines for the victim and on the date of incident i.e. 20.5.2022 when the complainant had gone to the shop of the petitioner to bring medicine for pain of arthritis, the petitioner deliberately given her wrong medicine, as a result of which, she became unconscious and petitioner committed rape upon her in the shop. The petitioner has clicked obscene photographs and shot nude video of the complainant also and had threatened her.

Learned counsel for the State further submits that the petitioner had been using the mobile phone, which bears the ID of his father Jot Ram and the location of that mobile number matched with the place of incident at the time of commission of offence as alleged. It is submitted that the challan in the case has been presented on 04.8.2023 and the charges are yet to be framed in the matter. He also submits that the complainant in her statement under Section 164 Cr.P.C. has supported the case of the prosecution.

Learned counsel for the complainant also opposes the bail application filed by the petitioner.

Without commenting on the merits of the case, however keeping in view the totality of facts and circumstances of the case including the fact that the material witnesses are yet to be examined and there is every likelihood that in case the petitioner is released on bail, he can tamper with the evidence, the present petition is dismissed.

September 12, 2023

Vijay Asija

**(NIDHI GUPTA)
JUDGE**

Whether speaking/reasoned Yes / No

Whether Reportable Yes / No