

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CRM-M-45734-2023

Date of Decision: 19.09.2023

Gaurav @ Gaurav Sharma

.... Petitioner

Versus

State of Haryana

.... Respondent

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present: - Mr. Navmohit Singh, Advocate for the petitioner.

Mr. Brijesh Sharma, AAG, Haryana.

NIDHI GUPTA, J. (ORAL)

The petitioner has filed the present 1st petition under Section 439 of the Code of Criminal Procedure, 1973, for grant of regular bail in case FIR No. 234 dated 21.11.2022 registered under Sections 323, 376(2)(n) and 506 IPC [Section 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and Section 67 of the Information Technology Act, 2000 were added later] at Women Police Station, Karnal.

The aforesaid FIR was registered on the basis of a complaint moved by the complainant/prosecutrix, which reads as under:-

“Complaint for taking legal action against 1.Gaurav 9050757574 son of unknown r/o Village Satondi, Police Station Sadar Karnal regarding making of video and audio and for blackmailing and for forcefully raping and for threatening to kill. Sir, I am Rakhi Devi wife of Ravinder

Kumar caste chamar r/o satondi District Karnal and I am peace loving and homely citizen and I pray to you that 1. That in village Satondi I am running a business of cosmetic and make up for my livelihood. 2. That around 8-9 months before accused Gaurav used to come to my house with my brother in law happy. Gaurav was having bad intentions and used to make obscene gestures. I told my brother in law happy but he ignored due to which the wrong actions of Gaurav started increasing. I came to know that my brother in law gave my number to Gaurav. I told Gaurav that why have you called me and I asked him how did he get my number he told me that number was given by brother in law. Then I asked Gaurav why did he call me then Gaurav told me that he loves me. You make relationships with me I will give you whatever you want. On which I threatened him that why did you call me and do not call me in future. But he kept doing obscene talks on the phone. One day Gaurav came at my shop and I was alone in the shop and he said that I have recorded our conversations on his phone. If you don't agree to what I say then he will send the recorded to my husband and will destroy my marriage and also made me listen to that recording on which I go mum and silent. After which Gaurav called me that I should come wherever he says otherwise it will not take time to destroy my home. He said that I should go his old home and I went to his old home under fear where no one used to live. He took me to room on the first floor and grabbed me in his arms against my will and I kept saying that you please don't do this with me then he pushed me down and against my will he broke the string of my salwar and forcefully raped me and I kept on protesting. I kept on praying to him to leave me but he completed his objective and also said that my friend has recorded the video. He said that whenever he asks me to

come I have to otherwise he will viral the video and destroy me. After this he blackmailed me and called me in agricultural fields and other places and raped me continuously. When I was on my periods he called me and raped me and I said that spare me today due to periods on which he abused me and assaulted me and passed remarks on caste. When Gaurav called me at his house after threatening me that if I don't come he will tell my husband and Gaurav made my video of entering and exiting the house and sent the video to my father in law on his phone and my parents in law kicked me out of my matrimonial home and as such Gaurav and Happy defamed me. Happy used to give his phone to me to talk to Gaurav. He used to say that if I don't talk to Gaurav that he will instigate Ravinder against me. They both connived to destroy my home. By sending the video to my relatives they have defamed me. Gaurav and Happy have shown the video to villagers and have made fun of me. For which my parents in law and my own family, my brothers have abandoned me. Now I am living in my sister's home in village Balu District Kaithal. My sister is my last hope. Gaurav also said that Salli Kutti Kamini you can't do anything to me wherever you want to go you can go and police won't do anything to me. It is prayer that on the above stated facts strict action be taken against Gaurav and Happy."

Learned counsel for the petitioner, *inter alia*, submits that petitioner has been falsely implicated in the present case. It is submitted that the petitioner and the complainant/prosecutrix who is a 30 years old married lady having three children, were in a consensual relationship. Perusal of the call details (Annexure P-4) which also forms part of the challan reveals that 159 calls have been exchanged between the

petitioner and the complainant/prosecutrix in the past 06 months. Learned counsel for the petitioner submits that as per the aforesaid call details (Annexure P-4) last call exchanged between the petitioner and the complainant/ prosecutrix was on 06.11.2022 and the aforesaid FIR was registered on 21.11.2022. It is also submitted that the petitioner also has the transcripts of the calls exchanged between him and the complainant/prosecutrix, as per which the complainant can be heard inviting the petitioner to the agricultural fields, her home and to the hotels etc. It is further submitted that the petitioner himself went to the police station and surrendered before the police. The petitioner has been in custody since 21.02.2023 and out of total 22 prosecution witnesses, none has been examined so far. The trial is likely to take long time. No useful purpose will be served by further detention of the petitioner in custody. Thus, it is prayed that petitioner may be released on regular bail.

Per Contra, learned counsel for the State has filed custody certificate dated 18.09.2023, which is taken on record, as per which the petitioner has been in custody as an undertrial for a period of 06 months and 26 days. Learned counsel for the State vehemently opposed the prayer for grant of regular bail to the petitioner by submitting that there are serious and specific allegations levelled against the petitioner. It is submitted that charges have already been framed by the trial Court and the next date of hearing before the trial Court is 18.10.2023.

Learned counsel for the petitioner counters the abovesaid submissions of learned counsel for the State and submits that perusal of the FIR reveals that no specific, date or time has been mentioned to show

that on which date and time the petitioner is alleged to have committed rape upon the complainant/prosecutrix.

Having heard learned counsel for the parties, but without commenting on merits of the case, however, keeping in view the totality of the facts and circumstances of the case including the fact that custody certificate reveals that there is no other case against the petitioner, and the fact that out of total 22 prosecution witness, no one has been examined so far, therefore, conclusion of trial will take sufficient time and no useful purpose would be served by further detention of the petitioner, the present petition is **allowed**.

The petitioner-Gaurav @ Gaurav Sharma S/o Shri Som Dutt, is ordered to be released on regular bail on his furnishing bail/surety bonds to the satisfaction of the trial Court/Chief Judicial Magistrate/Duty Magistrate, concerned.

However, it is made clear that nothing stated above shall be construed as an expression of opinion on the merits of the case.

19.09.2023

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**(NIDHI GUPTA)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No