

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

106+210

Criminal Misc. No. M-56355 of 2022

Date of decision :-22.09.2023

Babu Ram

.....Petitioner

Versus

State of Haryana

.....Respondent

CORAM:- HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Gaurav Vir Singh Behl, Advocate
for the applicant-petitioner.

Mr. Brijesh Sharma, AAG, Haryana
Assisted by L/HC Reena Rani.

Ms. Nancy Vashistha, Advocate
For the complainant.

NIDHI GUPTA J. (Oral)

CRM-38351-2023

Prayer in this application is for placing on record Medico
Legal Report dated 09.5.2022 of the victim as Annexure P-7.

The application is allowed subject to all just exceptions
and the Legal Report dated 09.5.2022 of the victim is taken on record
as Annexure P-7.

CRM-M-56355-2022

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.108 dated 08.5.2022, under Sections 376, 452, 506

and 511 IPC (later on Section 511 IPC deleted during investigation), registered at Police Station Chhachhrauli, District Yamuna Nagar.

The FIR was registered on the statement of the complainant/victim, which reads as under :-

“To respectable SHO Sahib Ji, Chhachhrauli, 1) Subject: for taking legal action against Babu son of Sh. Partap resident of Netru, Punjab. Sir, it is requested that the Applicant is resident of Village Kotra Kahan Singh, Tehsil Chhachhrauli, District Yamuna Nagar and I was present at my house at Village Kotra Kahan Singh, Tehsil Chhachhrauli, District Yamuna Nagar and abovesaid accused came after me at my village Kotra Kahan Singh. 2) That today my parents were not present in the house and abovesaid accused entered into my house and started misbehaving with me and started doing bad act with me. When abovesaid accused tried to do bad act, I raised hue and cry and there was house of Watchman near to our house and on hearing hue and cry he came to my house and got me saved from the abovesaid accused. 3) That abovesaid accused misbehaved with me forcefully, torn my clothes and tried to outrage my modesty. 4) That the abovesaid accused told me that if you talked about this to anybody, then he will kill you. 5) That thereafter, public gathered and resident of our village apprehended the accused, at this time, abovesaid accused is present in village Kotra Kahan Singh. 6) That now I have full threat to my life and liberty from the abovesaid accused and abovesaid accused may not get me killed. That is why, it is requested that legal action be taken against

abovesaid accused as soon as possible so that justice be given to me. Accused be given strict to strict punishment. My life and liberty be protected, I shall be very thankful.”

Learned counsel for the petitioner *inter alia* submits that the victim in the present case is a married woman of 20 years of age. It is submitted that initially the FIR was registered under Sections 376 IPC read with Section 511 IPC, however, subsequently, at the time of presentation of the challan, Section 511 IPC was deleted. Learned counsel submits that the only allegation against the petitioner is that of outraging the modesty of the complainant but she subsequently improved her version, due to which, Section 511 IPC was deleted. Learned counsel submits that even as per the MLR (Annexure P-5), which was conducted on the very same day of the incident i.e. 08.5.2022, it has been reflected therein that there are no external injuries marks on the person of the complainant, and also no penetration is reported to have been attempted. Learned counsel submits that the petitioner has been in custody since 09.5.2022 as under-trial i.e. more than one and a half year. It is submitted that the petitioner has been falsely implicated in the present FIR.

Learned State counsel has filed the short reply dated 21.9.2023 by way of affidavit of Parmod Kumar, HPS, Deputy Superintendent of Police, Yamuna Nagar on behalf of respondent-State, which is taken on record. Learned State counsel has also filed the custody certificate of the petitioner dated 20.09.2023, the same is also taken on record. As per the custody certificate, the petitioner has been in custody since 01 year, 04 months and 12 days as undertrial.

Learned State counsel, on instructions from L/HC Reena Rani submits that only one MLR was conducted in the present matter, which is dated 08.5.2022 (Annexure R-1), annexed with the short reply, as per which, no fresh external injury mark has been seen and no penetration has been attempted on the person of complainant. Learned State counsel, assisted by learned counsel for the complainant opposes the prayer for grant of regular bail to the petitioner on the ground that at the time of incident, the complainant was not under the supervision of her guardian and that the petitioner was caught red handed in the act by the Chowkidar, who is an independent eye witness to the whole occurrence. Learned State counsel refers to the statement of the said Chowkidar, recorded under Section 161 Cr.P.C., in which, the said Chowkidar has stated that wrong act has been committed. However, admittedly, it is not clarified that the said act was rape or molestation. Learned State counsel has stated that if the petitioner is released on bail, there is apprehension regarding security of the complainant. However, he is unable to elaborate as to how and in what manner there would be danger to the security of the complainant. Learned State counsel submits that out of total 14 prosecution witnesses, 12 witnesses have been examined.

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

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 trial of the case is likely to consume considerable time; and keeping in view the custodial period of the

petitioner; and the fact that there is no other case pending against him, his further custody may not be justified. Therefore, without meaning any expression of opinion on the merits of the case, it is ordered that the petitioner-Babu Ram s/o Partap Ram 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 22, 2023

Vijay Asija

(NIDHI GUPTA)
JUDGE

Whether speaking/reasoned Yes / No

Whether Reportable Yes / No