

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CRM-M-55425-2023 (O&M)

Date of order: 09.11.2023

Vinod Kumar Sharma

.....Petitioner(s)

Vs.

State of Haryana

.....Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Gaurav Gupta, Advocate
for the petitioner.

Ms. Deep Shikha Chauhan, AAG Haryana.

Nidhi Gupta, J.

Present is the second petition filed by the petitioner under Section 439 of Code of Criminal Procedure (hereinafter referred to as "Cr.P.C.") seeking grant of regular bail in case FIR No.555 dated 20.07.2023 registered under Section 376 of Indian Penal Code, 1860 (hereinafter referred to as "IPC") at Police Station SurajKund, District Faridabad (Annexure P1).

2. FIR in the present case was registered on the basis of statement of the victim and the same reads as under:-

"To the SHO, Police Station: Suraj Kund. Sir, it is submitted that I, Anita Sharma w/o Satya Dev Sharma r/o Budh Bazar, E-400, near Mittal Chowk, Delhi and I worked as a cook. I needed work so I told my friend Riya w/o Ram Avtar who lives in my neighbourhood. When I asked for work, she told me work and asked to work at Vinod Sharma's house, then I took number of Vinod Sharma and call to him on Sunday. On 16.07.2023 at about 08:15 he called me and said to see my house. When I came to talk on Sunday then he asked me to call him in 2-3

days. On 19.07.2023 at 7 pm I called him on his mobile No. 9873548980 from my mobile no. 8076352112 which I asked to Vinod that when I should come for work and today also you want to cook food. Vinod said I have reached home, you come tomorrow. Time was around 09:30 pm, as soon as I went inside the room, Vinod gave me water, I drank water. After that Vinod closed his gate from inside and I asked from him what food to be cooked and he asked me whether you want to go alive or die and he forcibly committed wrong act with me and make physical relations. Then I tried to call my friend Riya but he stopped me and cut my phone. Then I opened the door and came out and called on 112 and police came on the spot and alongwith police we came to the police station. Legal action may kindly be taken against Vinod Sharma, he forcibly make physical relations with me...”

3. Learned counsel for the petitioner vehemently submits that the allegations made against the petitioner in the FIR are false and fabricated. Learned counsel refers to testimony of the complainant/victim as PW1 (Annexure P3) wherein she has categorically stated that *“Stated that I am married and having three sons. I was working as maid in the house of accused and due to some salary dispute with the accused I went to police station for recovery of my amount and there I had signed on some blank papers at the instance of police. Accused did not commit any rape with me forcibly, at any point of time and made physical relations with me with my free consent only. My relations with the accused were consensual”*.

4. Notice of motion.

5. Ms. Deep Shikha Chauhan, AAG Haryana accepts notice on behalf of respondent-State and files custody certificate dated

09.11.2023, which is taken on record, as per which, the petitioner has been in custody as an under trial for a period of 3 months and 19 days. Learned State Counsel vehemently opposes the prayer for grant of regular bail to the petitioner and on instructions from ASI Anita submits that FSL report in the present case has been received, however, the same has not yet been opened by the police. It is also submitted that material witnesses including the complainant/victim as also the person who had introduced the petitioner to the victim, have turned hostile.

6. I have heard learned counsel for the parties.
7. Without commenting on the merits of the matter, however, keeping in view the totality of the facts and circumstances of the case including the fact that the petitioner is in custody since 22.07.2023, as also the fact that no other case is pending against the petitioner and the custody already undergone and that the material witnesses stand examined, present petition is **allowed**. Petitioner namely Vinod Kumar Sharma s/o Gouri Dutt Sharma is directed to be released on regular bail on his furnishing bail and surety bonds to the satisfaction of the concerned trial Court/Duty Magistrate.
8. However, it is made clear that nothing stated above shall be construed as an expression of opinion on the merits of the case.
9. Pending application(s) if any also stand(s) disposed of.

09.11.2023
Sunena

(Nidhi Gupta)
Judge

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No