

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

208

CRM-M-7142-2024

Date of Decision: 16.02.2024

Rahul

.... Petitioner

Versus

State of Haryana

.... Respondent

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present: - Mr. Sandeep Gahlawat, Advocate for
Ms. Amandeep Kaur, Advocate for the petitioner.

Mr. Surinder Kumar Dagar, DAG, Haryana.

NIDHI GUPTA, J. (ORAL)

The petitioner has filed the present 3rd petition under Section 439 of the Code of Criminal Procedure, 1973, for grant of regular bail in case bearing FIR No. 121 dated 11.12.2020 registered under Sections 376(2)(n), 120-B, 328, 354-A, 354-C, 377, 384 and 506 IPC and Sections 66-E and 67-A of the Information Technology Act, 2000 (during investigation Sections 120-B and 328 IPC have been deleted) at Women Police Station Jind, District Jind.

The aforesaid FIR was registered on the basis of statement of complainant/prosecutrix herself, which is reproduced as under:-

“.....Complaint against 1. Rahul S/o Rajesh Kumar Caste Balmiki resident of Ward No. 12 Khanori Mandi Khanori Punjab for committing repeated rape and extorting money by blackmailing and threat to kill after making obscene video of the applicant in collusion with Akash S/o Azad Caste Balmiki resident of Vijay Nagar Behind Deep Palace Jind. Sir applicant submits as under:-

1. *That the applicant is permanent resident of Vijay Nagar Jind.*
2. *That the I accused Aakash used to come to the house of applicant being neighbour and his relative Rahul also used to come to our house with him.*
3. *That one day when I was bathing in my house than accused Rahul made a video of my bathing and he has made this video in collusion with Aakash and he started to blackmail me by showing this video and use to say that I will made viral of your video on facebook and whatsapp and also said that I will send this vide o to your husband. Accused Rahul taking the benefit of this blackmailed me and committed rape with the in January 2020.*
4. *Accused make pressure of that obscene video and asking me to do on the whatsapp as I direct and do the chatting as I direct and due to fear of my inslut and being married and with a view of save my house I use to do the same as direct by accused Rahul and accused Rahul also use to made by obscene video and he got prepared by obscene photo and then said you will revealed to anydbody then I will kill your son and your brother and now I have a video of you wherein you are clearly visible and you are doing as per your wish whereas there was no consent of me and I was being blackmailed.*
5. *That the accused indulge my younger brother Vikas to take intoxicant because accused is dealer of intoxicant.*
6. *That one day accused asked me that to cut your hand with blade and upload a video of that on whatsapp and on his asking I cut my hand from blade because I did not speak anything due to fear and to save my honour as he said whereas I had not consent regarding this.*
7. *That in the month of August also Rahul came to my house at Vijay Nagar Jind and gave some intoxicant in cold drinks and committed rape against my consent and badly ill-treated me and forcibly committed a wrong activity with me in my mouth.*
8. *That accused asked rupees 50 thousand from me and I said that I do not have such amount and gave rupees five thousand with folded hand to accused and then accused forcibly snatched my ring of gold by blackmailing me and then accused demanded rupees one lakh from me and I replied that I do not have such amount and then accused Rahul upload my photo on facebook and written that this girl is available in Rs.10 I and my family members were told regarding this by my neighbour and thereafter my mother went Khanori at the house of accused Rahul and mother*

and father of Rahul insulted my mother and gave abuses and beating and supported Rahul and said that our son will do like this.

9. *That when did not gave Rs. One lakh to Rahul then Rahul sent my obscene video and photo to my husband and due to this my house has been broken.*
10. *Then when I talked to Aakash relative of Rahul regarding this then he supported Rahul and taking the benefit of the situation Aakash also asked me to make relation with him but I flatly refused to do this. In this way Aakash also tried to blackmail me. Therefore, it is prayed to you that action be taken against Rahul for making my obscene video against my consent and committing forcible rape and committing forcible unnatural offence in mouth and writing obscene words regarding me on facebook and taking money and rings by blackmailing and threatened to kill my brother and my son and regarding blackmailing by Aakash accused also and helping the accused and for insluting my mother by the parents of Rahul and by giving protection and instigating to accused Rahul the case be registered.....”*

Learned counsel for the petitioner, *inter alia*, submits that prosecutrix in the present case was a married lady at the time of incident. As per the FIR, the first incident took place in the month of January, 2020, however, the FIR was lodged 11 months thereafter on 11.12.2020. It is submitted that the prosecutrix had refused to undergo medical examination and as such *prima facie* there is no evidence against the petitioner. It is further submitted that during the course of trial the victim was examined and evidence of the prosecution was concluded and that the statement of the petitioner under Section 313 Cr.P.C. was also recorded. However, the Investigating Officer while appearing in the witness box has exhibited one pen drive which was never supplied to the present petitioner. Accordingly, the petitioner had filed an application under Section 311 Cr.P.C., seeking re-examination of the prosecutrix. The learned trial Court vide order dated 22.08.2023 (Annexure P-7) has

allowed the petitioner's application filed under Section 311 Cr.P.C.; against which the prosecutrix had approached this Court by way of filing CRR-2013-2023, wherein a co-ordinate Bench of this Court vide order dated 25.02.2024 (Annexure P-8), directed the trial Court to adjourn the case beyond that date fixed by the said co-ordinate Bench of this Court. Thus, it is submitted that the petitioner has been in custody since 13.12.2020 i.e. for a period of about 03 years and 02 months and due to *ex parte* stay granted by a co-ordinate Bench of this Court vide order Annexure P-8, the trial will take long time to conclude. 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 15.02.2024, which is taken on record, as per which the petitioner has been in custody as an undertrial for a period of 03 years, 02 months and 01 day. As per the said custody certificate, there is no other case against the petitioner.

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, custody period undergone by the petitioner; and that the custody certificate reveals that there is no other case against the petitioner; and also the fact that due to *ex parte* stay granted by a co-ordinate bench of this Court vide order Annexure P-8, the conclusion of trial will take considerable time, therefore, no useful purpose would be served by further detention of the petitioner. Thus, the present petition is **allowed**.

The petitioner-Rahul S/o Rajesh Kumar 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.

16.02.2024
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(NIDHI GUPTA)
JUDGE

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