

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CRM-M-8119-2023 (O&M)

Date of order: 21.02.2024

Mohd. Mehraj

.....Petitioner(s)

Vs.

State of Haryana

.....Respondent(s)

CORAM: HON’BLE MS. JUSTICE NIDHI GUPTA

Present:- Ms. Sharmila Sharma, Advocate  
for the petitioner.

Mr. Surinder Kumar Dagar, AAG Haryana.

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Nidhi Gupta, J.

Present is the first 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.199 dated 25.04.2022 registered under Sections 376 and 34 of Indian Penal Code, 1860 (hereinafter referred to as “IPC”) (Section 506 IPC added later on) at Police Station Sampla, District Rohtak (Annexure P1).

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

*“To the Incharge Sampla Chowki dated 25.04.2022. I Sonika daughter of Jagdish presently resident of Surya Nagar Sampla. I am residing with my foster sister. I am having a dispute with my family and my husband. On dated 07.04.2022, Reena gave me a telephonic call at 7:00 P.M. and asked me to come to her house. I went to the house of Reena after seeking permission from my foster sister. Reena called me inside her room and I*

*went to her room along with Reena, where one person namely Raja Ram was present, who is a occultist (Tantrik) by profession. I was impressed that he can be helpful to get her husband treated and asked him to do some witchcraft, but they committed mischief to me. Reena caught my both hands and one another person caught my legs and Raja Ram made forcible relations with me. When I was unconscious, I gave a telephonic call to my foster sister and disclosed her about the incident, then Reena presurized me not to disclose and gave me swear of her daughter. That in the name of Tantar Vidya she even cut my vein. Now, she openly claims that you have been exploited physically and sexually and I can rob the honor of anyone and no one can do anything to me. I will not let you live in Sampla. I have so many connections with the goons in the city. MC Ankit is like my extended family. It is therefore prayed to your good self that justice may kindly be done to me and stern legal action be taken against accused persons. Thank you SD-Sonika wife of Karambir resident of Bhainsru Khurd M. No.9050319174 and 98179672.....”.*

3. It is inter alia submitted by learned counsel for the petitioner that the person named in the FIR is “Raja Ram’ and the present petitioner before this Court is “Mohd. Mehraj”. It is submitted that though it is the case of the prosecution that the petitioner and the accused in the FIR are one and the same person, however, she vehemently opposes and disputes this. It is further submitted that the victim/complainant was a 29-year-old married lady living with her foster sister. As per the FIR, the date of alleged incident is 07.04.2022. However, FIR has been filed after an unexplained delay of 18 days on 25.04.2022. It is further submitted that the complainant was summoned to depose before the learned trial Court vide

order dated 16.01.2023, however, she has not appeared before the learned trial Court till date. It is also submitted that the petitioner has been in custody since 28.04.2022 i.e. for almost 2 years. It is submitted that accordingly, the petitioner be released on regular bail.

4. Learned State counsel files custody certificate dated 20.02.2024, which is taken on record. As per the custody certificate, the petitioner is in custody as under trial for 1 year 9 months and 23 days. Learned State Counsel opposes the prayer for grant of regular bail to the petitioner, and submits that out of 13 prosecution witnesses, 3 have been examined, however admits that the complainant is yet to be examined. Learned counsel refers to Annexure R2 filed along with the status report dated 08.11.2023 filed by way of affidavit of Rakesh Kumar, HPS, Deputy Superintendent of Police, Sampla, District Rohtak, wherein it is clearly noted that *"Mohammad Mehraj @ Rajaram @ Mohammad Raja"*. It is submitted that accordingly, the petitioner and the accused named in the FIR are one and the same person.

5. I have heard learned counsel for the parties.

6. Without commenting on the merits of the matter, however, keeping in view the totality of facts and circumstances of the case, including the fact that the petitioner has undergone considerable custody as under trial; out of total 13 prosecution witnesses, 3 have been examined; the complainant has not appeared before the learned trial Court for testifying despite the fact that she was first summoned on 16.01.2023; trial of the case would take time to conclude; and no useful purpose would be served by keeping the petitioner behind bars, present petition is

**allowed.** Petitioner namely Mohd. Mehraj s/o Farat Ulla Khan, 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.

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

8.                               Pending application(s) if any also stand(s) disposed of.

21.02.2024

Sunena

(Nidhi Gupta)  
Judge

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|---------------------------|--------|
| Whether speaking/reasoned | Yes/No |
| Whether reportable        | Yes/No |