

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CRM-M-8383-2024 (O&M)

Date of order: 21.02.2024

Abhishek Dagar

.....Petitioner(s)

Vs.

State of Haryana

.....Respondent(s)

CORAM: HON’BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Rohit Mittal, Advocate
for the petitioner.

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.321 dated 04.06.2022 registered under Section 346 of Indian Penal Code, 1860 (hereinafter referred to as “IPC”) (Sections 343, 376D, 406 and 420 IPC and Section 25 of Arms Act, 1959 added later on) at Police Station City Narnaul, District Mahendergarh (Annexure P1).

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

“To, S.H.O. sahib Police Station City Narnaul. Sir, I, Usha Devi wife of Surender Yadav, am a resident of Dadoli. That I had married my daughter Divya Rani to Abhishek son of Mahipal, resident of Keshav Nagar, Gali No.4, Narnaul, on 02 May, 2021. The mobile number of my daughter Divya Rani is 8168395610, on which I used to speak her and I had spoken to her last on 13.05.2022 at around 10:30 p.m., since then her mobile is

switched off and I have not been able to speak her. Abhishek's mobile no.9671512781 is also switched off and Abhishek's father Mahipal is not picking up the phone, for this reason only I had gone to the matrimonial home of my daughter also, but my daughter was not found anywhere in the house. My daughter may kindly be found. The body description of my daughter is wheatish complexion, long face, physics and thin and agile, height 5'4", education is she is in B.Sc. Third Year. Kindly track and locate my daughter Divya Rani....".

3. It is inter alia submitted by learned counsel for the petitioner that the petitioner was married to the prosecutrix on 02.05.2021. Vide decree dated 10.08.2022 (Annexure P3), divorce was granted to the parties by mutual consent under Section 13-B of Hindu Marriage Act, 1955. It is submitted that as per the complainant, the date of alleged incident, when the petitioner is alleged to have committed rape upon the prosecutrix, is 11.09.2022. The prosecutrix had filed an application before the learned Family Court, Gurugram dated 07.11.2022 (Annexure P7), for recalling and setting aside the judgment and decree dated 10.08.2022 (Annexure P3), as it was her contention that the said divorce under Section 13-B of the Hindu Marriage Act, 1955, had been fraudulently obtained by the petitioner. Learned counsel further states that in the said application, in Para 5(iv), the allegations are as under:-

"...On 11.09.2022, he persuaded the respondent to visit her village. She never suspected any foul play. However, after leaving the car and the applicant at her house in the village, he left the village and did not inform the applicant thereafter..."

4. It is submitted that there is no allegation of rape against the petitioner in the said application filed on 07.11.2022. Moreover, the petitioner has been in custody as under trial for over one year.

5. Notice of motion.

6. Mr. Surinder Kumar Dagar, AAG Haryana, accepts notice on behalf of respondent-State and files custody certificate dated 20.02.2024, which is taken on record. As per the custody certificate, the petitioner has been in custody as under trial for 1 year 2 months and 18 days. Learned State Counsel opposes the prayer for grant of regular bail to the petitioner, and submits that out of 18 prosecution witnesses 3 have been examined including the complainant and the victim, who have supported the prosecution case in their respective testimonies.

7. I have heard learned counsel for the parties.

8. 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; perusal of custody certificate reveals that there is no other case pending against the petitioner; out of total 18 prosecution witnesses, 3 material have been examined including the complainant and the victim, who have supported the prosecution case in their respective testimonies; 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 Abhishek Dagar s/o Mahipal Singh, 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.

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

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

21.02.2024

Sunena

(Nidhi Gupta)
Judge

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No