

2024:PHHC:077618



IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

210

CRM-M-9339-2024 (O&M)
Date of decision:30.05.2024

Shiv Kumar ...Petitioner

Versus

State of Haryana and another ...Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Dr. Anmol Rattan Sidhu, Senior Advocate with
Mr. Kanish Sarup, Advocate
for the petitioner.

Mr. Neeraj Poswal, AAG, Haryana.

MANISHA BATRA, J. (Oral)

1. This petition has been filed by the petitioner under Section 439 Cr.P.C. seeking regular bail in case bearing FIR No. 477 dated 10.12.2023, registered under Sections 354-A, 376(2)(e) of IPC (*later on Section 376(2)(e) was deleted and Sections 376, 420, 336 of IPC were added*)at Police Station Faridabad Old, District Faridabad.
2. Brief facts of the case relevant for the purpose of disposal of this petition are that the aforementioned FIR was registered on 10.12.2023 on the basis of a written complaint submitted by the complainant ‘K’ (*name withheld*) alleging that she was having stones in her body and was taking treatment from a place known as Bathinda and Jaipur Acupuncture, Naturopathy and Yoga Chikitsa Center at Faridabad. Every Sunday, she used

Neutral Citation No. 2024:PHHC: 077618

to go to that center for her treatment. This center was run by two male doctors and one female doctor. On 03.12.2023, she had also gone for her treatment. The female doctor was not present there. The male doctor i.e. the petitioner present there, called her inside and while checking her, moved her lower clothing upto her knee and on the pretext of checking her, inserted his fingers thrice in her private parts while saying that she should do so as by doing so, she would not be having any problem in committing acts of sexual intercourse in future. Then, he made her bend legs and again inserted his fingers and pressed her breasts. She got up and went outside, where her father was purchasing medicines. Thereafter, in the presence of her father, the petitioner again called her inside by saying that she was to be checked up again for deficiency of blood and while taking her behind the curtains, he threatened her not to tell about the incident to anyone.

3. On the above allegations, initially, a case under Section 354-A and 376(2)(e) of IPC was registered. Investigation proceedings were initiated. The victim refused to get herself medically examined. The petitioner/doctor was arrested on 10.12.2023. He was interrogated and suffered disclosure statement admitting his involvement in the subject crime and it was also disclosed that he did not have any degree qua Naturopathy, Acupressure or Yoga. Offence under Section 376(2)(e) of IPC was deleted and offences under Sections 376, 336 and 420 of IPC were added. The statement of the victim was recorded under Section 164 of Cr.P.C. on 11.12.2023, wherein she admitted that she had lodged complaint against the police but also stated at the same time that she did not want to initiate any action. After completion of necessary investigation and usual formalities, *challan* under Section 173

Neutral Citation No. 2024:PHHC: 077618

Cr.P.C. was presented and presently, the petitioner is facing trial for commission of aforementioned offences. He had moved an application for grant of regular bail before the trial Court which had been dismissed, vide order dated 16.02.2024.

4. It is argued by learned counsel for the petitioner that he has been falsely implicated in this case due to village fraction/village politics. There is delay of 07 days in lodging of FIR. The victim did not give her consent for medico-legal examination. In her statement recorded under Section 164 of Cr.P.C., she chose to remain silent. The petitioner is in custody since 10.12.2023. The trial is likely to take time. He does not have any criminal antecedents. The ingredients for commission of offences, for which he has been booked, are not attracted. No case of committing rape upon the victim has been made out. With these broad submissions, it is urged that the petition deserves to be allowed and the petitioner deserves to be released on bail.

5. Status report has been filed by the respondent-State, as per which, there are specific and serious allegations against the petitioner. The trial has commenced and there is nothing on record to show that there would be any undue delay in conclusion of the same. The victim and other material witnesses are yet to be examined. There are chances of the petitioner's intimidating them or absconding, if extended benefit of bail. Therefore, it is argued that the petition is liable to be dismissed.

6. I have learned counsel for the parties at considerable length and have also perused the material placed on record.

Neutral Citation No. 2024:PHHC: 077618

7. As per the allegations, the petitioner, who was running a Naturopathy, Yoga & Acupressure Centre at Faridabad without holding a proper degree, had been treating the victim for her problem of stones and she used to visit him at his clinic every Sunday. On the fateful day, when the female doctor was not present in the clinic, he had called her inside the room and on the pretext of conducting her check up, had undressed her lower clothing upto her knees and inserted her fingers three times into her private parts by saying that she would not have difficulty in performing sex by doing so and then by bending both of her legs, he had again inserted his fingers inside and also pressed her breasts. As per Section 375 of IPC, insertion of any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman by a person who makes her to do so with him or any other person amounts to commission of offence of rape punishable under Section 376 of IPC if such act is committed without her consent and against her will. The victim is yet to be examined. The pleas that in her statement recorded under Section 164 of Cr.P.C., she stated that she did not want to pursue the complaint filed by her any further, refusal on her part to get herself medically examined as well as delay of 07 days in lodging of FIR are the factors, which are to be considered by the trial Court and any conclusive finding has to be given on the same after thorough assessment and evaluation of the evidence produced on record and not at this stage. The allegations in the FIR show a *prima facie* case for commission of offence of rape upon the victim, who was young girl of 19 years of age at the relevant time. There is nothing on record at this stage to show that there would be any undue delay in conclusion of trial. Taking into consideration the nature of allegations levelled against the

Neutral Citation No. 2024:PHHC: 077618

petitioner, the quantum of sentence which the conviction may entail and attendant facts and circumstances of the case, I am of the considered opinion that this petition does not deserve to be allowed. Accordingly, the same is dismissed.

8. It is made clear that any observation made herein above is only for the purpose of deciding the present petition and the same shall have no bearing on the merits of the case.

30.05.2024

Waseem Ansari

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	Yes