



255 IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-9848-2024

Date of decision: 28th May, 2024

Thanesk Kumar @ Shashi

...Petitioner(s)

Versus

State of Punjab

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Vijay Lath, Advocate for the petitioner.

Mr. A.S. Samra, AAG, Punjab.

MANISHA BATRA, J (ORAL):-

The present petition has been filed under Section 439 of Cr.P.C.

seeking regular bail in FIR mentioned below:-

FIR No.	Date	Police Station	Sections
19	27.02.2023	Nangal, District Rupnagar, Punjab	376, 34 and 120-B of IPC, 1860

2. The relevant facts in brief are that the aforementioned FIR was registered on the basis of statement recorded by the prosecutrix 'R' (name withheld) at the police Station making allegations that her marriage had taken place with 'P' (name withheld) on 17.01.2017. Her husband had gone abroad and was working there as a driver after one year of her marriage. She alleged that in the month of April, 2020, when her husband was still abroad,



her mother-in-law got a religious ceremony performed from the petitioner who is a tantrik for begetting a child as she had not become pregnant till then. The said ceremony was performed in her matrimonial house where her parents in-laws were present. The present petitioner had made them leave the room while performing such ceremony and while humming occult mantras, he had disrobed the prosecutrix, had kissed sensitive parts of her body after applying honey over the same with a banana and then inserted that banana in her private parts and had also captured all these activities in his mobile phone. Thereafter, she was given bath by the petitioner after removing her clothing in the presence of her mother-in-law. The prosecutrix was very scared and could not disclose about the incident to anyone. She narrated the incident to her husband but was assaulted by him and then turned out of her matrimonial house by her husband. Therefore, she prayed for taking action in the matter.

3. After registration of FIR, investigation proceedings were initiated. Co-accused Pushpa i.e. mother-in-law of the prosecutrix was arrested on 27.02.2023. The present petitioner was arrested on 28.02.2023. The prosecutrix refused to get her medical examination conducted. Her statement under Section 164 of Cr.P.C. was recorded. After completion of necessary investigation and usual formalities, challan under Section 173 of Cr.P.C. was presented in the Court and presently, the petitioner along with co-accused Pushpa Devi is facing trial for the commission of the offence punishable under Section 376 read with Section 120-B of IPC. He had filed



an application for grant of bail before the learned trial Court which was dismissed vide order dated 17.08.2023.

4. The learned counsel for the petitioner has vehemently argued that there is unexplained delay of about three years in reporting the matter to the police. No medical examination of the prosecutrix was conducted. The petitioner is a jeweller by profession and he had no concern with any tantrik activities nor he knew about humming any such mantra and performing any puja. The allegations as levelled against him did not make out any case for commission of offence of rape as against him. The ingredients for commission of offence under Section 375 of IPC were not made out at all. In the divorce petition filed by the prosecutrix against her husband, no allegation qua her being subjected to rape by the petitioner had been levelled. The allegation that her husband was abroad in April, 2020, when the alleged occurrence had taken place was false on the face of the record as he was very much in India after 08.03.2020.

5. It is further argued that the petitioner is suffering from paralysis and seizures and is a disabled person who can not even perform basic activities now. The victim has since been examined. The further detention of the petitioner would not serve any useful purpose. It is further argued that the co-accused Pushpa Devi i.e. mother-in-law of the prosecutrix has since been extended benefit of bail and on the ground of parity, he too deserves to be released on bail. Therefore, it is argued that the petition deserves to be



allowed.

6. Status report has been filed by respondent-State. It is alleged therein and it is argued by learned State counsel that there are serious and specific allegations against the petitioner. The trial is going at a good pace. Several witnesses have since been examined. There is nothing on record to show that there would be any undue delay in conclusion of the same. The allegations make out a case for commission of offence punishable under Section 376 of IPC as against the petitioner as the ingredients for commission of offence of rape as defined under Section 375 of IPC are duly established. Therefore, it is argued that the petition does not deserve to be allowed.

7. I have heard learned counsel for the petitioner as well as learned State counsel at considerable length and have gone through the record carefully.

8. As per the allegations in the FIR, the petitioner was a tantrik by profession and in the month of April, 2020, he in-conivance with the parents in-law of the prosecutrix had performed some occult ceremony at her matrimonial house so that she could conceive a child and while performing that ceremony, he had made her parents in-law leave the room, disrobed her, applied honey with a banana on her sensitive body parts, kissed her and thereafter, inserted the said banana in her private parts. Under Section 375(b) of IPC, insertion to any extent, of any object or a part of body not being the



penis into the vagina, the urethra or a anus of a woman by a man or making her to do so with him or any other person amounts to commission of offence of rape. As per the descriptions of the circumstances as given under this Section under which rape can be said to have committed relevant descriptions are that such act must have been committed against the will, without the consent of the woman or when the consent has been obtained by putting such woman in fear of death or hurt. It is a debatable question as to whether the act allegedly committed by the petitioner falls within the definition of rape or not and the same can be decided by the trial Court on assessment of the evidence produced before it while deciding the case. As per admission made by the prosecutrix in her cross-examination, the petitioner was suffering from paralysis from the year 2018 and is even unable to move without any help. There are certain inconsistencies as to the date of the occurrence that have been pointed out by learned counsel for the petitioner since as per the allegations in the FIR, the occurrence had taken place in April, 2020 but in her sworn deposition, the prosecutrix admitted that her husband was in India from 07.03.2020 to 20.02.2021. There is delay of more than three years in reporting the matter to the police. There are no chances of petitioner's intimidating the prosecutrix since she already stands examined. He is in custody since 28.02.2023. Keeping in view of the discussion as made above, I am persuaded to hold that the petitioner deserves to be released on bail during the pendency of the trial. Therefore, the petition is allowed and he is ordered to be released on bail subject to his

furnishing personal/surety bonds to the satisfaction of the Chief Judicial Magistrate/ Duty Magistrate concerned.

9. It is clarified that observations made hereinabove shall not be construed as an expression of opinion on the merits of the case.
10. Since the main petition has been allowed, pending application if any is rendered infructuous.

[MANISHA BATRA]
JUDGE

28th May, 2024
Parveen Sharma

1. Whether speaking/ reasoned : Yes / No
2. Whether reportable : Yes / No