

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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CRM-M-11802-2024

Date of Decision: 12.03.2024

Subhash Yadav

.... Petitioner

Versus

State of Punjab

.... Respondent

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present: - Ms. Parul Saini, Advocate for
Mr. P.S. Saini, Advocate for the petitioner.

Ms. Aakanksha Gupta, AAG, Punjab.

NIDHI GUPTA, J. (ORAL)

The petitioner has filed the present 1st petition under Section 439 of the Code of Criminal Procedure, 1973, for grant of regular bail in case FIR No. 90 dated 13.10.2023 registered under Sections 376 and 506 IPC (Section 420 IPC was added later on) at Police Station Women Cell, District SAS Nagar (Mohali).

The present FIR has been registered on the basis of statement of complainant/victim herself and the contents thereof, as mentioned in para 3 of the impugned order dated 01.02.2024 (Annexure P-4), read as under:-

“3. FIR in question was registered at the instance of complainant wherein she has stated that she is major having date of birth 04.06.1992 and is a deserted wife of Kuldeep Singh and a divorce petition is pending before the Family Court, Kharar. The complainant is a self-employed person who is working as a small time private cook in Omaxe township since the year 2019. The complainant has also stated that Subhash Yadav (accused/applicant herein) is

known to her, who had become friends with her since the month of October, 2021. When she has visited his shop for purchase of an inverter by showing compassion and concerned towards her plight wherein she was deserted by her husband leaving a minor male child with her and having no sustainable source of income to look after her minor child. The complainant has further stated that the accused has promised to marry her and adopted her minor child and promised to forthrightly get engaged to her publicly and it has also promised by him that after the formal divorce was granted to her, then he will marry her. Then the accused has continued to talk of marriage with the complainant and to make false promises of marriage with her. On 11.12.2021, the accused has called the complainant to his friend's Hotel located at Nayagoan to discuss the modalities of engagement with her wherein he has wished to strategize the manner in which he would convince his parents to agree for marriage with a divorced women with a minor child but instead made sexual relationship with her despite of her resistance and protested by telling him not to establish sexual relationship with her. The complainant has further stated that the accused has continued to call to Hotel on various occasions spread over a period of one and half years and made sexual relationship with her on the pretext of engagement and marriage with her and adopted her minor son. When confronted to get engaged with her before marriage, the accused has told her that he has wished to construct a house for her before marriage. So as to provide secure life to her and for that purpose, the accused has started demanding money from her. The accused has also extorted a total amount of Rs.4,09,250.00 from her on multiple occasions by threatening her of publicly exposing their relationship and later on passed threats of posting her naked video and photographs to the known people and also by uploading the same on internet and had ever forced her to take a personal loan of Rs.65,000/- from HDB Financial Services Limited in the complainant's name for construction of his house but never revealed the place where he constructing the house for her and till dated she is paying the EMIS of the same. The complainant has further stated that she is paying back the installments (EMIS) of the said personal loan since then. The extortion money of Rs.4,09,250.00 paid to the accused on multiple occasions was collected by her. The complainant has maintained the complete records of the aforesaid averments which she is ready to submit during fair investigation. The accused has threatened her to make the said obscene/intimate/naked video and photographs viral, in case the complainant dared to lodge a complaint in the police station against accused."

Learned counsel for the petitioner, *inter alia*, submits that

the complainant/victim in the present case is a married woman with a son. It is submitted that the complainant was in extramarital relationship with the petitioner for over 01 year and 06 months. However, their relationship turned sour, resulting into lodging of the present FIR. In this regard, learned counsel for the petitioner has referred to page 10 of the paper-book, wherein in para 7 of the FIR, it had been admitted by the complainant/victim that she had met the petitioner multiple times over a period of 01 year and 06 months, including the following dates 06/11/2021, 15/11/2021, 17/11/2021, 29/11/2021, 27/12/2021, 16/01/2022, 02/03/2022, 13/03/2022, 28/03/2022, 06/04/2022, 29/04/2022 and 26/05/2022. Learned counsel also refers to page 12 of the paper-book, wherein in para 15 of the FIR the complainant/victim had admitted that the petitioner had paid a total sum of Rs.4,02,750.00 to the complainant vide payments made on multiple occasion through G-pay and had threatened her to pay back the transferred amount in cash to him on each occasion. Accordingly, it is submitted that the allegation that the petitioner was seeking to extort money from the complainant/victim as he had threatened her that he will viral her obscene videos, is ill founded, as it was in-fact the complainant/victim who had borrowed money from the petitioner. The petitioner has been in custody since 14.10.2023. No useful purpose will be served by further detention of the petitioner in custody. Thus, it is prayed that the present petition may be allowed and the petitioner be released on regular bail.

Learned counsel for the State has filed custody certificate dated 11.03.2024, which is taken on record, as per which the petitioner has been in custody as an undertrial for a period of 04 months and 26

days. As per custody certificate, there is no other case against the petitioner. It is submitted that challan in the present case has already been presented before the trial Court, however, charges are yet to be framed. Learned State counsel vehemently opposes the prayer for grant of regular bail to the petitioner and submits that the complainant/ victim in her statement recorded under Section 164 Cr.P.C. has fully supported the case of the prosecution. MLR of the complainant/victim is not yet prepared and FSL report is still awaited. The mobile phones of the petitioner and the complainant/victim have also been taken into custody and the FSL report qua the mobiles is also awaited. Learned counsel for the State refers to para 9 of the FIR at page 11 of the paper-book, wherein the complainant/victim has given the details of the payments made from her account to the account of the petitioner. It is also alleged that the complainant/victim had also taken a loan of Rs.65,000/- from HDB Financial Services Ltd., in her own name for the construction of the house of the petitioner. It is, however, admitted that the complainant is a married woman who has a son and the present FIR was lodged by her as the petitioner reneged from the promise to marry her and also threatened her to make her obscene photos and videos viral.

At this stage, reference may be made to the recent judgment of the Hon'ble Apex Court in 'Ansaar Mohammad vs. State of Rajasthan and another', 2022 SCC Online SC 886, wherein while granting pre-arrest bail to the appellant therein, it was held that "*if relationship is not working out, the same cannot be a ground for lodging FIR for offence under Section 376(2)(n) IPC*". Reliance be placed upon judgment of the Hon'ble Supreme Court in Criminal Appeal No. 3431 of 2023, titled as

‘xxxx vs. State of Madhya Pradesh and another’ decided on 06.03.2024.

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 and the custody period undergone by the petitioner including the fact that the custody certificate reveals that there is no other case against the petitioner; and also the fact that charges are yet to be framed by the trial Court, therefore, conclusion of trial will take considerable time and no useful purpose would be served by further detention of the petitioner. Thus, the present petition is **allowed.**

The petitioner-Subhash Yadav S/o Bhagwan Dean, 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.

12.03.2024

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(NIDHI GUPTA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No