

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

2024:PHHC:061870



207

CRM-M-14832-2024

Date of Decision: 06.05.2024

Mayank Sharma

.... Petitioner

Versus

State of Haryana and another

.... Respondents

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present: - Mr. Sachin Jain, Advocate with
Ms. Anuja Saxsena, Mr. Dhaman Dhir and
Mr. Yogesh Bhardwaj, Advocates for the petitioner.

Mr. Surinder Kumar Dagar, DAG, Haryana.

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. 319 dated 13.06.2023 (Annexure P-1) registered under Sections 323, 376(2)(n) and 506 IPC at Police Station Sector-27, District Sonipat, Haryana.

The aforesaid FIR was registered on the basis of complaint moved by the victim/respondent No. 2 herein, which is reproduced as under:-

“.....To SHO Sahib, Sector 27 Sonapat Sir, I request that I am Muskaan D/o Ashok Village Khedi Laga Gannaur, District Sonipat. I am a resident of sonipat. I used to do FASHION DESIGNER (2022) course in INT INSTITUTE. In

2022 I received a message from MAYANK S/O Mahender r/o Village Asoda, Bahadurgarh. I forbade him to message or call me but he used to do message again and again. After some time we both started talking. 1 December 2022 he came to meet me at BUS STAND Sonipat and made me to sit in TAXI with him and went to TAJGUEST HOUSE Sonipat and took me to a room and forcefully did wrong with me against my will and told wants to marry her. On 16/4/2023 I received a phone call from mayank and told me that he wants to marry me today itself but I do not have money therefore you bring money and jewelry from home. I brought 7 tolas of gold jewelry and about 1 kg of silver jewelry from my house. The gold ornaments were sold by MAYANK after 2 days. He kept me in different hotels of RAINI, Rohini, Bawana and Narela and on the pretext of marriage forced me to have physical relations against my will and made my photos and videos. After that he started blackmailing me in the name of making my photos and videos viral and started raping me every day. When I asked him to marry me, he refused and snatched my phone and tried to keep me locked in the room. One day he threatened to kill my family members and to make my photos and videos viral, and on these basis got my statement recorded before the authority in the missing report which was registered by my family and got it cancelled. After that he used to fight with me every day. Yesterday at evening on 12/6/2023 MAYANK came after drinking too much alcohol and thrashed me and forcefully did wrong things with me and got drunk. He fell asleep due to drinking alcohol. I taking advantage of that opportunity called my family members from his phone and told the whole thing and Whats Apped my LOCATION to my brother MONTY. After which my family members on 13/6/2023 at around 6 in the morning, took me out with them and no I request you to take legal action against MAYANK and given me justice..... ”

Notice to respondent No. 2-victim was issued vide order dated 02.04.2024, however, none has put in appearance on her behalf.

Learned counsel for the petitioner, *inter alia*, submits that petitioner and the victim/complainant-respondent No. 2 herein were in a consensual relationship. At the time of occurrence, the petitioner was 20 years of age; whereas the victim/respondent No. 2 was 22-year-old. It is submitted that in the aforesaid FIR, the only allegation levelled against the petitioner is that he had initiated physical relations with the

victim/respondent No. 2 on the false pretext of marriage. In this regard, learned counsel refers to a judgment of the Hon'ble Supreme Court in *XXXX vs. State of Madya Pradesh, 2024 SCC OnLine SC 241* decided on 06.03.2024, wherein it has been held that offence of rape is not made out on false promise to marry. The petitioner has been in custody since 02.12.2023. The trial is likely to take a long time to conclude. Thus, it is prayed that petitioner be released on regular bail.

Per Contra, learned counsel for the State opposes the prayer for grant of regular bail to the petitioner and submits that the victim in her statement recorded under Section 164 Cr.P.C. has supported that case of the prosecution. It is further submitted that the FSL report qua the exhibits submitted by the victim/respondent No. 2 has come negative, as no semen was found on the same. Learned counsel for the State submits that during the course of investigation, record of the hotel was also taken into police possession, wherein there is an entry which shows that the petitioner and the victim/complainant have gone to the hotel.

Learned counsel for the State has filed custody certificate dated 02.05.2024, which is taken on record, as per which the petitioner has been in custody as an undertrial for a period of 05 months. As per custody certificate, there is no other case against the petitioner. On instructions from ASI Seema, learned counsel for the State submits that out of total 20 prosecution witnesses, only 02 have been examined so far and the victim/respondent No. 2 is yet to be examined.

It may be pointed out that in the FIR, the victim/respondent No. 2 had levelled the allegation that the petitioner after drinking too much alcohol had thrashed the victim/respondent No. 2. Learned counsel

for the petitioner has placed on record a copy of deposition of PW-2 Dr. Harsha, Medical Officer, who had medico-legally examined the victim/respondent No. 2 herein, which shows that *‘no external injury was found on the body of the person of the prosecutrix’*.

Having heard learned counsel for the parties, but without commenting on the merits of the case, however, keeping in view the totality of the facts and circumstances of the case; including the custody period undergone by the petitioner, and perusal of the custody certificate reveals that there is no other case against the petitioner; and also the fact that the conclusion of trial will take considerable time as out of total 20 prosecution witnesses, only 02 have been examined so far, and no useful purpose would be served by further detention of the petitioner. Thus, the present petition is **allowed**.

The petitioner-Mayank Sharma S/o Mohinder Singh, 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.

06.05.2024

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(NIDHI GUPTA)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No