

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

203

CRM-M-16311-2024

Date of Decision: 09.04.2024

Sushil Kumar

.... Petitioner

Versus

State of Haryana

.... Respondent

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present: - Mr. Manvinder Sidhu, Advocate 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. 0468 dated 28.05.2023 registered under Sections 323, 376(D) and 506 IPC at Police Station Civil Lines Sirsa, District Sirsa.

The aforesaid FIR was registered on the basis of complaint made by the prosecutrix herself and the brief facts of the case as mentioned in para 2 of the impugned order dated 02.02.2024 (Annexure P-4), passed by the learned Additional Sessions Judge, Fast Track Special Court, Sirsa, are reproduced as under:-

2. *According to the complaint dated 28.05.2023 of the complainant/prosecutrix, she is a household lady. Her marriage was performed in the year 2010 with Rakesh and from the said wedlock, she has two sons aged about 11 years and 08 years. She got divorce from Rakesh on 09.11.2020. Her second marriage was performed with Dharambir after sometime and she has been living in D.C.Colony in a rented house along with Dharambir and her two sons. There are*

two rooms in the rented house and in one room, she along with her family is residing and in another room, one Sushil, who works with her husband, is residing. She considered Sushil as her brother. Sushil did not pay rent for two months. Her husband had taken the said house on monthly rent of Rs.5500/- out of which they used to pay Rs.3500/- per month and Sushil used to pay Rs.2000/- per month as rent. For the last about one month, friends of Sushil, who were vagabond type of persons, used to come to him due to which she and her husband wanted to get vacated the said house from Sushil and she asked several times to Sushil to give rent of two months but he used to quarrel with her. On 26.05.2023 at about 03.00/04.00 PM, her husband had gone out for seeing a house on rent. Sushil and his friend Arjun came to their room and she also went there demand the payment of rent. Sushil gave a slap on her face and in turn she also tried to give him slap but Sushil pushed her and she fell down on a cot and Sushil asked her that he pays her rent now and while saying so, he forcibly put off her pyzami and also removed his pants and attempted to commit rape upon her forcibly and he pressed her neck with both hands and also scratched on her chest with teeth and hands. She tried to save herself and in the meantime, Arjun caught hold of her both legs and due to pressing her neck, her noise could not emitted. Thereafter, Sushil put his pants and Arjun removed his pants and was about to commit wrongful act with her, her husband Dharambir came there and on seeing him, both of them fled away from the spot along with their clothes, bed sheet and other articles and while leaving, they threatened to kill her and her husband if she disclosed the incident to anyone. Her husband gave her medicine at home and she became unconscious. On the next day, she regained consciousness but she was not in a position to walk and during night her blood pressure became high and she was taken to Civil Hospital, Sirsa.”

Learned counsel for the petitioner, *inter alia*, submits that at the time of alleged incident the petitioner was 24 years old; whereas the complainant/prosecutrix was about 28 years of age. The complainant/prosecutrix has been married twice and is a mother of 02 children. It is submitted that the petitioner is a boy of small build and weighs around 40 Kgs.; whereas the complainant/prosecutrix weighs about 90 kgs., therefore, on the face of it, the allegations made in the FIR are false and fabricated. The petitioner has been falsely implicated in the present case

as the complainant/prosecutrix was demanding Rs.20,00,000/- from the petitioner and his family members which they are not in a position to pay. It is further submitted that the falsity of the case is also made out from the fact that the complainant/prosecutrix has not submitted her clothes for examination. As per MLR, 2 injuries/contusions which were declared simple in nature were found on the person of complainant/prosecutrix. The petitioner has been in custody since 09.11.2023. The trial is likely to take long time. No useful purpose would be served by further detention of the petitioner in custody. He is a young un-married boy and his future/career will be spoiled. Thus, it is prayed that petitioner be released on regular bail.

Per Contra, learned counsel for the State vehemently opposes the prayer for grant of regular bail to the petitioner and submits that the complainant/prosecutrix in her statement recorded under Section 164 Cr.P.C., has fully supported the case of the prosecution. It is further submitted that investigation in the present case has already been completed and challan has also been presented before the learned trial Court. The next date before the learned trial Court is 12.04.2024 for framing of charges.

Learned counsel for the State has filed custody certificate dated 07.04.2024, which is taken on record, as per which the petitioner has been in custody as an undertrial for a period of 04 months and 29 days. As per custody certificate, there is no other case against the petitioner.

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; 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 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-Sushil Kumar S/o Rajender 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.

09.04.2024
rishu

(NIDHI GUPTA)
JUDGE

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