

Sr. No.212

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-18411-2023
Date of decision: 16th February, 2024

MANDEEP SINGHPetitioner

versus

STATE OF PUNJABRespondent

CORAM: HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN

Present: Mr. Vikram Preet Arora, Advocate
for the petitioner.

Mr. Ramandeep Singh, Sr. DAG, Punjab (through VC).

Mr. Ramandeep Singh Brar, Advocate for
Dr. Sumati Jund, Advocate for the complainant.

HARPREET KAUR JEEWAN, J. (ORAL)

1. The instant petition has been filed by the petitioner under Section 439 of the Code of Criminal Procedure, 1973 seeking regular bail in case FIR No.75 dated 03.10.2022, under Sections 376, 506, 365 IPC, registered at Police Station Chamkaur Sahib, District Rupnagar (Annexure P-1).
2. Learned counsel for the petitioner contends that the petitioner has been falsely implicated in the present case. The family of the petitioner and the complainant are known to each other. The present FIR is a counter-blast to the proceedings initiated by the petitioner under Section 138 of Negotiable Instruments Act, 1881 for recovery of loan of Rs.8,00,000/- advanced by the petitioner to the parents of the prosecutrix. The petitioner had already filed a criminal complaint (Annexure P-2), under Section 138 of Negotiable Instruments Act,1881 and a suit for recovery (Annexure P-4).

3. The present FIR was registered on the basis of a complaint moved by the prosecutrix with the allegations that the petitioner is residing in her neighbourhood and he had been making WhatsApp phone calls to the prosecutrix and asking her to meet him to show the prosecutrix some objectionable photographs of her. When the prosecutrix refused to meet the petitioner, he threatened her to make the said photographs viral in the village. On 30.09.2022, the petitioner made a WhatsApp call to the prosecutrix and asked her to sit in his car and took her along with him to show her the said photographs. Thereafter, he started fondling her private parts and when the prosecutrix objected to the same, he accelerated the car and took her to a flat in Kharar on the pretext that her photographs are lying there. The petitioner committed rape upon the prosecutrix in his flat at Kharar and thereafter, he dropped her at Chamkaur Sahib. Initially, the parents of the prosecutrix lodged a missing report in Police Station, Chamkaur Sahib and when the CCTV footage was checked, it revealed that the petitioner had taken the prosecutrix in his car. When the Police started calling the petitioner, he insisted the prosecutrix on WhatsApp call to make a statement in his favour.

4. Learned State counsel, while referring to the status report dated 11.09.2023 contends that the medical examination of the prosecutrix was conducted. Her statement under Section 164 Cr.P.C. was also recorded and on 05.10.2022, the petitioner was arrested and sent to judicial custody. After completion of investigation, final report under Section 173 Cr.P.C. was presented before the trial Court on 01.12.2022. The charges were framed on 05.06.2023. After examining 04 witnesses, the prosecution moved an application before the trial Court for taking the blood sample of the petitioner for DNA examination.

5. Learned counsel for the complainant has opposed the bail application

on the ground of gravity of allegations levelled against the petitioner.

6. I have considered the aforesaid contentions.

7. A perusal of the supplementary status report dated 10.10.2023 shows that as per the call detail record (CDR) of the mobile phone of the petitioner, the petitioner had made 06 calls and sent 02 text messages to the prosecutrix during the period from 17.07.2022 to 30.09.2022. However, as per the CDR of the mobile phone of the victim, she had made 58 calls and sent 49 messages to the petitioner during the said period.

7.1. As per the affidavit of Dr. Seema Sharda dated 25.10.2023, DNA report dated 19.10.2023 (Annexure R-1) was submitted as per which, human semen was not detected on the various exhibits i.e. the source sample of the victim.

7.2. As per the status report dated 19.12.2023, the data was extracted from the mobile phone of the petitioner and no incriminating video or photograph except the screenshots of the WhatsApp chat between the petitioner and the prosecutrix have been found.

8. The petitioner was granted interim bail for a period of eight weeks, as per order dated 25.05.2023, passed by the Coordinate Bench of this Court, which is reproduced as under:-

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Learned counsel for the petitioner has vehemently argued that the entire story narrated in the FIR is false and concocted and a counter-blast to the proceedings initiated by him under Section 138 Negotiable Instruments Act, 1881 for recovery of loan of Rs.8 lacs, advanced to the parents of the prosecutrix.

Learned counsel for the complainant assisting the learned State counsel has vehemently opposed the bail on the ground that the petitioner has committed a heinous crime and does not deserves the concession of bail.

However, learned counsel for the complainant could not demonstrate any cogent proof of return of Rs.8 lacs advanced to the petitioner, however, prays for time to demonstrate the said factum also.

Learned State counsel on a specific query as to whether any objectionable material was found from the mobile of the petitioner, the State counsel has submitted that nothing was recovered, however, the said device has been sent for FSL. He further submits that the challan has been submitted in December, 2022, but the charges are yet to be framed.

Learned counsel for the petitioner vehemently argued that the petitioner is in custody since 03.10.2022 and is ready to give any heavy surety even to the extent of Rs.15 lacs, moreso, he also submits that the complainant has approached the petitioner for settlement and are asking for Rs.15 lacs. However, this fact is strongly objected to by the counsel for the complainant.

In light of the above and after considering the entire matter, it is apparent that civil dispute has been given a criminal colour and the fact that petitioner is in custody since 03.10.2022, let the petitioner be released on interim bail for a period of eight weeks on his furnishing bail/surely bonds for an amount of Rs. 15 lacs to the satisfaction of the trial Court/Duty Magistrate concerned, and he is directed to surrender before jail authorities on 24.07.2023 by 10:00A.M. The petitioner shall not induce or threaten the complainant or her family members either himself or by any third person.

In the meanwhile, trial Court is advised to proceed in the matter expeditiously and after framing the charges, initiate the process of recording the prosecution witnesses.

Learned counsel for the complainant is also permitted to place on record any cogent proof of the repayment of Rs.8 lacs of the loan which was advanced by the petitioner.

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9. As per the order dated 25.05.2023, learned counsel for the complainant was permitted to place on record the cogent proof regarding repayment of loan of Rs.8,00,000/-, which was allegedly advanced by the petitioner. However, the

complainant has not placed on record any proof regarding payment of loan of Rs.8,00,000/- in compliance of the order dated 25.05.2023.

10. As per the previous order dated 31.01.2024, passed by the Coordinate Bench, out of total 12 prosecution witnesses, 07 have been examined.

11. Investigation is complete; final report under Section 173 of the Code of Criminal Procedure has been presented before the trial Court. Statements of only 07 witnesses have been recorded. The petitioner is in custody since 05.10.2022. The trial will take considerable time to conclude, as such, without commenting on the merits of the case and keeping in view the above facts, the present petition is allowed.

12. The petitioner is ordered to be released on regular bail, subject to his furnishing adequate bonds/surety to the satisfaction of the trial Court/CJM, concerned.

13. All the pending miscellaneous application(s), if any, shall also stand disposed of.

(HARPREET KAUR JEEWAN)
JUDGE

16th February, 2024
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Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No