

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

205

CRM-M-20551-2024 (O&M)

Date of order: 30.04.2024

Vikram Singh

.....Petitioner(s)

Vs.

State of Haryana

.....Respondent(s)

CORAM: HON’BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Vikas Bishnoi, Advocate
for the petitioner.

Mr. Surinder Kumar Dagar, DAG Haryana.

Nidhi Gupta, J.

Present is the first petition filed by the petitioner under Section 439 of Code of Criminal Procedure (hereinafter referred to as “Cr.P.C.”) seeking grant of regular bail in case FIR No.134 dated 07.11.2021 registered under Sections 354-A, 376(2)(n), 376(2)(f), 376(3) and 506 of Indian Penal Code, 1860 (hereinafter referred to as “IPC”) at Women Police Station Hisar, District Hisar.

2. In the present case victim and her mother had both gone for registration of the FIR, which was registered on the basis of statement of the victim herself. The FIR is reproduced hereinbelow:-

“Statement of Kushal D/o Vikram, R/o Chandan Nagar aged 13 years, education 8th. Mob. No.99170-4292. Stated that I am resident of abovementioned address and I am studying in Govt. High School, Ludas in 8th class. We are three brothers and sisters. My father is having Spa Centre in Bhiwani and my mother has opened shop of General Store in the house only. My

father is committing bad act with me from the past one year. My father has threatened me that if I tell this thing to my mother, then he will kill me. Due to fear I will not tell this thing to anybody. Now from last 2 months, my father is harassing me very much. After having some strength, I told this entire thing to my mother. After that my father went to Bhiwani and I have got recorded my statement with my mother in Women Police Station, Hisar. Legal Action be taken against my father. I have given my statement, is read over and is correct. Sd/ - Kushal Sd/ - Sunita."

3. It is inter alia submitted by learned counsel for the petitioner that the petitioner has been falsely implicated in the present FIR. It is vehemently stated that the alleged victim is the daughter of the petitioner, and it is a blasphemous allegation that the petitioner has committed rape with his own daughter. It is stated that in actual fact, there were temperamental differences between the petitioner and his wife, which had now taken the form of a monetary dispute and it is in this background that the present FIR came to be registered. It is further stated that the real sister of wife of the petitioner is married to real brother of the petitioner; they have six daughters, and there has never been any complaint of this kind. Learned counsel submits that the said six daughters of sister of the petitioner's wife were joined in the investigation by the Investigating Agency and they have all stated that no such incident ever happened.

4. Learned counsel for the petitioner also refers to the report under Section 173 Cr.P.C. (Annexure P2) wherein after investigation, the concerned DSP had reported that *"....it was found that there was*

dispute between respondent Vikram and his wife Sunita from quite some time.....it was found during investigation that now Sunita do not want to reside in her matrimonial home in Chandan Nagar, Hisar and she wants to construct her house in her parental home in Village Dhansu only and for this to create unnecessary pressure on his husband respondent Vikram and for taking money, she has got registered this case with false allegations by misleading her daughter _____ and the same has been found to be correct by presenting the recording between the respondent Vikram and his father-in-law. Therefore, till now as per investigation in the present case, no truth has come out in the allegations leveled against the accused....". It is argued that the falsity of the allegations made in the FIR is proven from the above facts/report referring to a call recording between the father-in-law of the petitioner and the petitioner in which it has been admitted that wife of the petitioner wants to extort money from him. It is reiterated that the present FIR has been lodged only to extort money from the petitioner. It is submitted that accordingly, in view of the above facts a cancellation report was prepared in the matter on 27.01.2022.

5. Learned counsel further submits that the petitioner is in custody since 15.03.2022; and therefore, prays that the petitioner be released on regular bail.

6. Learned State Counsel files custody certificate dated 29.04.2024, which is taken on record. As per the custody certificate, the petitioner has been in custody for 2 years 1 month and 15 days.

7. Learned State Counsel vehemently opposes the prayer made on behalf of the petitioner and submits that FIR has been registered

on the basis of statement of the daughter of the petitioner herself. It has further been alleged therein that continuous offence had been committed by the petitioner since one year prior to the registration of the FIR; and the date of last incident is September, 2021. Ld. State counsel further informs that although the victim was medico-legally examined, however, no samples were taken because history of sexual assault was of two months prior to the registration of the FIR.

8. Learned State Counsel further submits that the victim in her statement under Section 164 Cr.P.C.; in her testimony as PW3; and mother of the victim in her testimony as PW5, have all supported the prosecution case. Learned counsel clarifies that although at one stage cancellation report was prepared in the case on 27.01.2022, however, the same was not presented as the mother of the victim had produced a CD before the Investigating Agency in which there was a conversation between brother-in-law of the petitioner and mother of the victim in which brother-in-law of the petitioner could be heard saying that the petitioner had molested the daughter of the said brother-in-law as well. It is stated that it was for this reason that re-investigation was ordered in the case.

9. Ld. Counsel for the petitioner rebuts this contention of the learned State Counsel by submitting that the said brother-in-law of the petitioner is the brother of the wife of the petitioner. It is contended that accordingly the CD submitted by the wife of the petitioner is manufactured.

10. Learned State Counsel further points out that another case bearing FIR No.6/2022 dated N/A under Section 3 of Immoral Trafficking Act at Police Station Civil Line, Bhiwani, has also been registered

and pending against the petitioner. Learned State Counsel vehemently submits that in case the petitioner is released on bail there is every likelihood that he will try to overawe the victim/child as also the witnesses and in all probability even repeat the offences.

11. Mr. Rehan Gupta, Advocate puts in appearance on behalf of the victim and her mother and files Memorandum of Appearance, which is taken on record. Learned counsel opposes prayer made on behalf of the petitioner and submits that as per the MLR, it has been reported that *“Hymen is torn and healed. No congestion and no tenderness. No bleeding present at the time of examination from vaginal orifice”*. Learned counsel points out that the victim was only 13 years of age at the time of offence and from the above MLR, it is clear that she was subjected to sexual abuse.

12. No other argument is made on behalf of the parties.

13. I have heard learned counsel for the parties and perused the case file in great detail.

14. The Hon’ble Supreme Court in case of **“Sanjay Chandra v. CBI”, (2012) 1 SCC 40, Law finder Doc ID # 275589** has observed in para 39 that in determining whether to grant bail both aspects have to be taken into account:

a) seriousness of the charge; and

b) severity of punishment.

15. Without commenting on the merits of the present matter, however, keeping in view the totality of the facts and circumstances of the present case, including the heinous nature of the offence alleged against the petitioner; and the fact that another case

bearing FIR No.6/2022 dated N/A registered under Section 3 of Immoral Trafficking Act at Police Station Civil Line, Bhiwani, is pending against the petitioner; that custody certificate further indicates that besides the above mentioned two FIRs, there were four other FIRs registered against the petitioner, including an FIR no. 188 of 2020 under section 174 – A IPC at Police Station City Hisar in which the petitioner eventually surrendered and was therefore, acquitted by the court of learned JMIC, Hisar vide order dated 02.04.2024; which is indicative of the fact that the petitioner is a habitual offender and could constitute a threat to society; and keeping in view the apprehension expressed by the child-victim in the present FIR, present petition is **dismissed**.

16. However, it is made clear that nothing stated above shall be construed as an expression of opinion on the merits of the case.

17. Pending application(s) if any also stand(s) disposed of.

30.04.2024
Sunena

(Nidhi Gupta)
Judge

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No