



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

203

CRM-M-20753-2024

Date of Decision: 08.05.2024

Parvez @ Parvej

.... Petitioner

Versus

State of Haryana

.... Respondent

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present: - Mr. Sarfraj Hussain, 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. 261 dated 11.08.2023 registered under Sections 365, 376 and 506 IPC at Police Station Punhana, District Nuh, Haryana.

The aforesaid FIR was registered on the basis of complaint moved by the father of the victim and the brief facts of the case as mentioned in para 2 of the impugned order dated 04.04.2024 (Annexure P-3), passed by the learned Additional Sessions Judge, Nuh, are reproduced as under:-

“2. Brief facts of the case are that complainant has submitted that accused is a quarrelsome and a person with bad conduct, he also submitted that accused had threatened his daughter, namely, Mxxxx from past couple of days and he also used to do bad act with her and used to commit rape upon her against her will and accused also prepared her obscene video and clicked her photographs and accused



used to commit bad act upon her time and again by creating pressure upon her of making her photographs and video as viral. Complainant further submitted that accused Parvej had given one mobile phone to her daughter, Mxxxx through which he used to talk to her and also used to give threats of kidnapping her from her house and in this context on 09.08.2023 at about 03:00/04:00 PM when Mxxxx went to attend the call of nature, then accused kidnapped her on the threat of making her video viral and on the way, accused committed rape upon her against her will and thereafter, accused left his daughter at village Malab from where she went to the house of her elder sister and thereafter, complainant brought his daughter back to his house. however, due to societal pressure, they did not get the FIR registered.”

Learned counsel of the petitioner, *inter alia*, submits that the victim and the petitioner were in a consensual relationship. At the time of alleged occurrence, the victim was 19-year-old. It is stated that it was alleged in the FIR that the petitioner used to commit rape upon the victim under the threat of making viral her obscene pictures and videos. Learned counsel submits that during the course of investigation, the petitioner had handed over his mobile phone to the Investigating Agency and no obscene pictures and videos of the victim were recovered from the said mobile phone. It is further submitted that the victim in her statement dated 12.08.2023 (Annexure P-1) recorded under Section 161 Cr.P.C., had admitted that the petitioner had given her a mobile phone on which they used to talk with each other. Thus, from this it is clear that the petitioner and the victim were in a consensual relationship. Further, it is submitted that it has been alleged by the complainant side that family members of the petitioner have entered the house of the victim and had pressurized them to depose in the favour of petitioner at the time of their testimonies before the learned trial Court. Learned counsel for the



petitioner submits that on the last date of hearing i.e. 06.05.2024, when the case was listed for hearing before the learned trial Court, non-bailable warrants have been issued against the victim as she is not appearing before the learned trial Court for several dates for recording her statement. Lastly, learned counsel for the petitioner submits that there is an unexplained delay of 02 days in lodging the FIR, as the occurrence took place on 09.08.2023; whereas the present FIR was lodged two days thereafter on 11.08.2024. The petitioner has been in custody since 02.10.2023. The trial is likely to take a long time to conclude. No useful purpose would be served by further detention of the petitioner in custody. 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 victim in her statement recorded under Section 164 Cr.P.C. has fully supported the case of the prosecution. Learned counsel for the State has placed on record a copy of MLR of the victim in Court today and admits that it is mentioned therein that no mark of external injury was found on the person of the victim at the time of her medico-legal examination. It is further submitted that the FSL report is also negative as no semen was found on the exhibits submitted by the victim.

Learned counsel for the State has filed custody certificate dated 07.05.2024, which is taken on record, as per which the petitioner has been in custody as an undertrial for a period of 07 months and 05 days. As per custody certificate, there is no other case against the petitioner. On instructions, from L/ASI Sunil, learned counsel for the



State informs that out of total 13 prosecution witnesses, no one has been examined, so far. It is not denied by learned counsel for the State that non-bailable warrants have been issued by the learned trial Court against the victim, on account of her non-appearance for several dates for recording her statement before it.

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 as out of total 13 prosecution witnesses no one has been examined so far. Thus, the present petition is **allowed**.

The petitioner-Parvez @ Parvej S/o Niyaj Mohd., 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.

08.05.2024
rishu

(NIDHI GUPTA)
JUDGE

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