

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M No.23878 of 2023
Date of Decision: 11.03.2024

Anish Shankaran ... Petitioner

Versus

State of Haryana ... Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Amitabh Tewari, Advocate,
for the petitioner.

Ms. Nidhi Garg, AAG, Haryana.

MANISHA BATRA, J.(Oral)

1. The present petition has been filed under Section 439 of Cr.P.C. seeking regular bail in FIR mentioned below:-

FIR No.	Police Station	Sections
121	Women Police Station, Faridabad, District Faridabad, Haryana	376 and 506 of IPC

2. Brief facts of the case relevant for the purpose of disposal of this petition are that the aforementioned FIR was registered on 29.09.2022 on the basis of statement recorded by the complainant "K" (name withheld) alleging therein that her husband had died on 18.06.2019 in a road accident. She had three children and she was working as a Sweeper in hospital since November 2020 at Faridabad. She used to have night duty. On 23.09.2022 at about 2:30 AM, she had gone to C.T. scan room to bring some C.T. scan report, when the petitioner had met her. He asked her to sit and made her to wait for quite sometime. When she again asked him to give the C.T. scan report, he said that he would get the

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report later on, but she should get her own C.T. scan done as she was looking very frail. The complainant refused to get her C.T. scan done and tried to leave the room but by closing the door of the C.T. scan room, the petitioner made her forcibly lie on the C.T. scan machine and thereafter while switching off the light of the room, he forcibly committed rape upon her and thereafter extended threat to kill her if she disclosed about the incident to anybody. She alleged that due to fear, she did not disclose about the incident to anyone but had now mustered the courage to do so. On her statement, a case under Sections 376 and 506 of IPC was registered. Investigation proceedings were initiated. The statement of the prosecutrix under Section 164 Cr.P.C. was recorded. She was medically examined. The petitioner was arrested on 30.09.2022 and he was also medically examined. After completion of necessary investigation and usual formalities, challan under Section 173 Cr.P.C. was presented in the Court and presently, the petitioner is facing trial for commission of aforementioned offences. He had moved an application for grant of regular bail before the Court of learned trial Court which was dismissed vide order dated 02.02.2023.

3. The present petition has been filed by the petitioner on the grounds and it is argued by his counsel that there was delay of six days in lodging of the FIR. The version of the prosecutrix is quite unnatural, improbable and unworthy. No marks of injuries were found on her body as per the medico legal report. No semen was detected on the vaginal swabs of the victim. The prosecutrix is habitual of filing false complaints of similar nature in order to extort money from different persons. During the course of her sworn deposition, she has admitted that she has filed complaint against

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one Vikas earlier. Previously, She had also lodged an FIR bearing No.191 of 2020 at Police Station Women NIT, Faridabad against one Chandan Kumar Bharti making allegations of being raped by him and the said Chandan Kumar Bharti has been acquitted vide judgment dated 31.01.2024 passed in case bearing No.SC 91 of 2021. Learned counsel for the petitioner has also placed on record a copy of the judgment passed in the said case.

4. It is further argued by learned counsel for the petitioner that the pen drive containing CCTV footage of the hospital wherein both of them were working, does not show that the prosecutrix had even gone to him and was made to stay in his room on the fateful night. It is also argued that the falsity of the version of the prosecutrix stands proved from the fact that neither any alarm is shown to have been raised by her in the hospital after the incident nor she could be forced to lie down in the C.T. scan machine as it is not practical to make any person/female lie inside the C.T. scan machine and then to commit rape upon such woman. He has argued that the petitioner was also a small employee in the hospital and was not having any commanding position over the prosecutrix. As such, she had full opportunity to inform about the act allegedly committed by the petitioner at that very time to her seniors but she did not do so and took time of six days for even reporting the matter to the police. While submitting that the trial is likely to take time, the antecedents of the victim herself are not clean and no useful purpose would be served by keeping the petitioner in custody, it is urged that the petition deserves to be allowed.

5. The respondent-State has filed status report wherein it is submitted that the allegations as levelled in the complaint were found to be

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correct on conducting investigation. The prosecutrix had since been examined. The trial had started and there was nothing on show that there would be any undue delay in conclusion of the same. The allegations against the petitioner are serious in nature. Therefore, it is argued by learned State counsel that the petition does not deserve to be allowed.

6. I have heard learned counsel for the petitioner as well as learned State counsel at considerable length and have gone through the record carefully.

7. As per the allegations, the prosecutrix who had been working at a hospital was asked on the night of 23.09.2022 at about 2:30 AM to bring C.T. scan report of some patient from the petitioner who is also an employee of the same hospital and who used to work on the C.T. machine. It is alleged that by firstly making the prosecutrix wait for quite sometime, the petitioner forced her to get her C.T. scan done by saying that she was looking weak, had made her lie down in the C.T. scan machine and then ravished her. The prosecutrix had reported the matter to the police after a gap of six days i.e. on 29.09.2022. No semen has been detected on the vaginal swabs of the victim as per the forensic report. A copy of sworn deposition of the victim as recorded before learned trial Court has been placed on record by the petitioner which shows that she had corroborated the allegation of her being subjected to forcible physical relations as on the night of 23.09.2022. Though at the stage of considering a plea for grant of bail, it is not defeasible for the Court to draw any conclusion, much less to return any finding, and it is well settled proposition that such a finding or decision must await a thorough assessment and evaluation of evidence to be led/led by the parties

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at the trial. However, on a perusal of the material placed on record before this Court, there appears to be no cavil that there are material improvements in the version as given by the prosecutrix at the time of recording her sworn deposition from the version as given in the FIR. The FIR of this case which as discussed above was lodged after a gap of six days, does not find any mention of the fact that during the intervening period, the prosecutrix had disclosed about the incident to anyone. Rather it is specifically recorded that due to fear, she did not tell anybody about the incident. However, her sworn statement shows that she stated that just after the incident, she had made call to some manager of the hospital known by the name of Vikas as his phone was switched off, therefore, information was given by her to the said Vikas on the next day but the said Vikas had offered her money and told her to sign a paper by writing that the incident had taken place with her mutual consent. This fact was concealed at the time of lodging of FIR. Even during the course of investigation, his name does not appear to have been taken by her and that is why no person with the name of Vikas is stated to have been cited as a witness.

8. Further, the prosecutrix is also shown to have admitted that she did not disclose about the incident to anyone except Vikas though she was having full opportunity to disclose about the same to any other senior officer/authority in the hospital. It is shown to be admitted by her that after the incident, she had worked in the hospital for 3-4 days and then she was transferred to Rohini. She has lodged the FIR of this case after her transfer. Strangely, in her examination-in-chief, she did not take the name of the present petitioner as the person who had ravished her though she identified

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him as such in the Court. She stated that she had been asked to fetch copy of C.T. scan report by one Chetan who was working in the same hospital as staff member and it was he who had asked her to wait in the C.T. scan room and it was he who had made her to wait in the C.T. scan room and after laying her down on the bed of C.T. scan machine had forcibly established physical relations with her. Though during cross-examination, she stated that it was accused Anish who had made her sit on a chair in C.T. scan room forcibly and had not handed over the report to her but at the same time, she stated that she did not know as to whether the accused Anish could speak Hindi language or not as he belonged to Kerala. The statement so made raises a serious question as to whether she had infact interacted with the petitioner at all and had any conversation with him as she does not appear to be even knowing that the petitioner who is hailing from Kerala was conversant with Hindi language or not?

9. There are some other factors which have raised doubt about the veracity of the allegations as levelled in the FIR. The petitioner has placed on record the pendrive containing extract of the CCTV camera footage of the area wherein the C.T. scan room of the hospital is existing. This Court has seen the CCTV footage captured in this pen drive which is pertaining to the period from 2:30 AM till 3:39 AM on the relevant date but the same only shows one female and one male passing through the gallery outside the C.T. scan room during the relevant period. Then the petitioner has also placed on record a copy of judgment dated 31.01.2004 passed in case bearing FIR No.191 dated 18.10.2020 registered under Sections 376, 451 and 506 of IPC at Police Station Women NIT, Faridabad showing that the present

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prosecutrix had lodged the aforementioned FIR against the abovesaid Chandan Kumar Bharti levelling allegations of committing rape upon her by him as on 30.09.2020 and he has been acquitted of the charge. During her cross-examination, the prosecutrix is shown to have admitted that she had lodged the aforementioned FIR No.191, though according to her, it was lodged against one Abhay, Supervisor of Metro Hospital, Faridabad. It is also shown to have been stated by her that she had taken name of one Sunil, Supervisor of Metro Hospital, Faridabad wherein she was previously working and the said Sunil had got removed her from her services from the said hospital.

10. Upon a conspectus of the foregoing considerations as emanating from the record i.e. the fact that no semen had been detected on the vaginal swabs of the victim, there is delay of six days in lodging of the FIR and the prosecutrix is shown to have made contradictory statements with regard to that delay, the fact that she named some person other than the present petitioner as her ravisher during her examination-in-chief and coupled with the fact that it has become debatable as to whether she infact had any conversation/interaction with the petitioner on the fateful night as she is not even shown to be aware of the fact in which language the petitioner could speak and in view of overall facts and circumstances but without meaning to make any comment on the merits of the case lest the same may prejudice the trial Court and while mentioning that nothing observed herein above, would reflect on the merits of the case, in any manner as the same has been recorded for the limited purpose of deciding the present petition, this Court is persuaded to admit the petitioner to bail subject to his furnishing

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personal/surety bonds to the satisfaction of learned trial Court and further subject to the conditions that he shall not contact, visit, offer any inducement, threat or promise to any of the prosecution witnesses or other persons acquainted with the facts of the case, shall not tamper with the evidence and more specifically shall neither contact nor interact, whether directly or indirectly with the prosecutrix or her family, in any manner whatsoever.

11. A copy of this order be sent to the concerned Jail Superintendent forthwith.
12. The petition is allowed in these terms.
13. It is clarified that observations made hereinabove shall not be construed as an expression of opinion on the merits of the case.

11.03.2024
manju

(MANISHA BATRA)
JUDGE

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