

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

106+216

CRM-9351-2024 in/and  
CRM-M No.23824 of 2023  
Date of Decision: 07.03.2024

Rajinder Singh ... Petitioner

Versus

State of Punjab ... Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. B.S. Aulakh, Advocate,  
for the petitioner.

Ms. Ruchika Sabherwal, DAG, Punjab.

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MANISHA BATRA, J.(Oral)

CRM-9351-2024

The application is allowed, as prayed for and documents  
Annexures P-6 and P-7 are taken on record.

Main Case

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

| FIR No. | Dated      | Police Station                       | Sections           |
|---------|------------|--------------------------------------|--------------------|
| 284     | 10.10.2021 | Lambi, District Sri<br>Muktsar Sahib | 376 and 506 of IPC |

2. Brief facts relevant for the purpose of disposal of this  
petition are that the aforementioned FIR was registered on 10.10.2021 on  
the basis of statement recorded by the prosecutrix “R” (name withheld)  
alleging therein that she had been married in the year 2012 but due to  
matrimonial discord with her husband, she was residing at her parental  
house from the last about six months. She further recorded that the

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petitioner who belonged to village of her in-laws, was a regular visitor to the house of her in-laws and that is why she knew him. He was, however, having an evil eye upon her. She alleged that in the month of July 2021, he came to her parental house when she was alone, he subjected her to act of sexual intercourse while extending threat to not to disclose about the incident to anyone. On 08.10.2021, he again came to her house and she was ravished again at his hands under threat. He also used to proclaim that he would defame her amongst her relatives if she disclosed about the incident to anybody. The petitioner, however, disclosed about the entire incident to her mother who came in the evening and was taken to hospital. She was medically examined. On the basis of her statement and after registration of FIR, investigation proceedings were initiated. Her statement under Section 164 of Cr.P.C. was also recorded on 03.11.2021 wherein she reiterated the allegations as levelled in the FIR. The present petitioner was arrested on 12.10.2021. 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 learned trial Court which was dismissed vide order dated 12.09.2022.

3. The present petition has been filed by the petitioner seeking regular bail on the grounds and it has been argued by his counsel that he is in custody since 12.10.2021. He has been falsely implicated in this case. Infact, there was consensual physical relationship between the petitioner and the prosecutrix who was not having good terms with her husband and had been

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living separately from him. She has lodged this case against her on account of a minor dispute. The statement of the prosecutrix has since been recorded. There are material inconsistencies and improvements made in the version as given in the FIR as well as in her statement which fully establish that she had never been subjected to act of forcible sexual intercourse by the petitioner and was maintaining physical relationship with him out of her own will. Learned counsel for the petitioner has, therefore, argued that it is a fit case for extending benefit of bail to the petitioner as the allegations for commission of offence of rape have not been made out on the record.

4. Per contra, learned State counsel has argued that there are serious allegations against the petitioner. The victim had become pregnant and her pregnancy was got aborted. In her statement recorded before the police as well as under Section 164 of Cr.P.C., she had reiterated the allegations as levelled against the petitioner. Her sworn statement was also recorded wherein she had supported the version of the prosecution. There was nothing to show that there would be any undue delay in conclusion of the trial. Therefore, it is argued that the petition does not deserve to be allowed.

5. I have heard learned counsel for the petitioner as well as learned State counsel and have given due deliberations to the contentions as raised by both the sides besides perusing the material placed on record.

6. The offence of 'rape' is defined under Section 375 of IPC and it sets out certain circumstances. Relevant for the purpose of this case, is the second circumstance that a male subjecting a female to sexual intercourse without her consent, commits offence of rape. As per Explanation-2 of

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Section 375, 'consent' means an unequivocal voluntary agreement when the women by words, gestures or any form of verbal or non verbal communication, communicates willingness to participate in the specific sexual act. At this stage, it will also be relevant to refer to Section 90 of IPC, as per which a 'consent' given by a person under fear of injury, or under a misconception of fact, and if the person doing the act knows, or has reason to believe, that the consent was given in consequence of such fear or misconception, is not consent. It is well settled proposition of law that the 'consent' with respect to Section 375 of IPC, involves an active understanding of the circumstances, actions and consequences of the proposed act.

7. In the instant case, the petitioner as well as the prosecutrix are mature and married persons. Though in the FIR as well as the present petition, the stand taken by the prosecutrix was that she was not having good and cordial relations with her husband and was living separately from him and at her parental house from the last six months and also alleged that the petitioner had visited her parental house and had ravished her in the month of July 2021 and then on 08.10.2021. However, a perusal of her sworn deposition, copy of which has been placed on record by the petitioner reveals that during cross-examination, she had admitted that Annexure P-6 which was exhibited as Annexure D1 bearing No.875LPC/PS/SMS dated 02.09.2021 was filed by her against the present petitioner before Chief Officer, Police Station Lambi. On going through the contents of Annexure P-6 (Ex.D1) as produced before learned trial Court, it is revealed that the allegations made by the prosecutrix in this complaint was that the present

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petitioner who was a Registered Medical Practitioner had come to her matrimonial house one day while she was sick and had given her such pills and injections on having which she had become unconscious. She alleged that thereafter he had committed rape upon her and had maintained illicit relationship with her due to which she had been thrown out of her matrimonial house as her husband had come to know about this fact. In her cross-examination, She is even shown to have stated that after filing of Annexure P-6 on 02.09.2021, she did not meet the petitioner. If her version to this effect is believed, then no offence of rape was committed upon the prosecutrix as on 08.10.2021 as alleged by her. As such, the question as to veracity of her version is prima facie debatable.

8. Though at the stage of considering a plea for grant of bail, it is not feasible for the Court to draw any conclusion, much less to return any finding, as to whether it was a case of consensual physical relationship or rape and this is also not the stage when this Court can decide this question as such findings must await a thorough assessment and evaluation of evidence led by the parties at the trial. However, in the present case, there appears to be no doubt that the prosecutrix has been taking different stands with regard to the points of time when she had been ravished by the petitioner and was made to enter into illicit physical relationship with her. The testimony of the prosecutrix has already been recorded. Therefore, there are no chances of petitioner's intimidating her or tampering with the evidence if extended benefit of bail. It is a debatable question that the relationship between the parties was consensual one or she was subjected to forcible acts of sexual intercourse by him. There is nothing on record to show that there are any

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circumstances suggestive of petitioner’s fleeing from justice or thwarting the course of justice or creating other troubles in the shape of repeating offences. Therefore, upon a conspectus of the foregoing considerations, this Court is persuaded to admit the petitioner to regular bail pending trial subject to his furnishing personal as well as surety bonds to the satisfaction of learned trial Court and subject to the condition that he shall not contact, visit or offer any inducement, threat or promise to any of the prosecution witnesses and especially the prosecutrix or her family in any manner whatsoever. The petitioner shall also not visit the locality in which the prosecutrix ordinarily resides. It is made clear that nothing in this order shall be constructed as an expression of opinion on the merits of the case. The petition stands allowed.

9. It is clarified that observations made hereinabove shall not be construed as an expression of opinion on the merits of the case.

07.03.2024  
manju

(MANISHA BATRA)  
JUDGE

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|---------------------------|--------|
| Whether speaking/reasoned | Yes/No |
| Whether reportable        | Yes/No |