

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M No.24433 of 2023
Date of Decision: 27.02.2024

Hardev ... Petitioner

Versus

The State of Haryana ... Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. R.K. Choudhary, Advocate,
for the petitioner.

Mr. Arjun Lakhanpal, Addl. AG, Haryana.

Mr. Tanmoy Gupta, Advocate,
for the complainant.

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.	Dated	Police Station	Sections
990	22.12.2021	Camp Palwal, District Palwal	323, 342, 376 (2) (n), 506 and 34 of IPC

2. Brief facts relevant for the purpose of disposal of this petition are that the aforementioned FIR was registered on the basis of statement recorded by the prosecutrix “C” alias “S” (name withheld) as recorded on 22.12.2021 alleging therein that on 19.12.2021 at about 6:30 PM, she had come to her parlour known as Sneha Beauty Parlour when the petitioner reached there and after extending threats to her, made her forcibly sit on his bike. She was taken by him to his house wherein she was made a hostage and was repeatedly ravished at his hands. She tried to flee at around 9:30 PM on finding opportunity but was caught on

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the way by the co-accused Mohit, Abhishek, Hriday Sagar, Rocky and Manish who are friends of the present petitioner. She was extended beatings and was threatened to be killed. She managed to come back on 21.12.2021 at about 9:15 AM and then told about the incident to her family members. After registration of FIR, investigation proceedings were initiated. The prosecutrix was medically examined. Her statement under Section 164 of Cr.P.C. was recorded wherein she reiterated the allegations as levelled by her in the complaint. The petitioner was arrested on 09.02.2022. He was interrogated and suffered disclosure statement admitting his involvement in the subject crime and also got recovered the motorbike used by him at the time of occurrence. He was also medically examined. After completion of necessary investigation and usual formalities, challan under Section 173 Cr.P.C. was presented against him and presently he is facing trial. Two co-accused were arrested subsequently. Supplementary challan was presented against them. The remaining accused are yet to be arrested.

3. The present petition has been filed by the petitioner on the grounds and it is argued by his counsel that he has been falsely implicated in this case. Infact, the prosecutrix was also married and was having a child but she gained the sympathy of the petitioner by projecting that she was not happily married and was harassed continuously by her husband. They came into relationship gradually and on 27.05.2020, they had decided to stay in live-in-relationship and an agreement of live-in-relationship as well as affidavit by the prosecutrix were also executed in this regard. It is submitted that the story as narrated by the prosecutrix of her being forcibly taken away by the petitioner and being ravished at his hands is totally false as no

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external injury was found on her person. The petitioner is in custody since 09.02.2022. The trial is likely to take time. The prosecutrix is intentionally delaying recording of her statement before the trial Court despite the fact that charge had been framed against him since long. The trial is likely to take time. No useful purpose would be served by keeping him in custody any more. It is argued by him that he deserves to be extended benefit of bail.

4. The respondent-State has filed status report as per which human semen has been detected on the underwear of the prosecutrix which is sent for DNA examination. There are serious allegations against the petitioner. It is, however, admitted that live-in-agreement was executed between the petitioner and prosecutrix as on 27.05.2020. It is further submitted that the petitioner is a person having criminal antecedents and as many as five criminal cases are pending against him. It is argued that there are chances of petitioner's intimidating the prosecutrix and other material witnesses if extended benefit of bail and hence, it is urged that the petition does not deserve to be allowed.

5. The complainant has also filed reply alleging therein that despite being in custody, the petitioner has been extending threats to her family members and herself through his friends and in this regard another FIR bearing No.116 dated 15.02.2023 has also been got registered against him at Police Station Camp Palwal under Section 506 of IPC. It is, therefore, argued that the petitioner does not deserve to be extended benefit of bail.

6. I have heard learned counsel for the petitioner, learned counsel for the complainant and learned State counsel and have minutely gone through the record.

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7. As per the allegations, the petitioner had forcibly taken the victim on his bike on the evening of 19.12.2021 to his house and by wrongfully confined her, had repeatedly committed rape upon her till 21.12.2021 and had also caused beatings to her apart from extending threats to her. The petitioner has placed on record a copy of live-in-agreement Annexure P-2 as per which, the petitioner and the complainant had agreed to reside in live-in-relationship w.e.f. 27.05.2020 and had mentioned that there was love affair between them. It is also shown to be mentioned in this agreement that the prosecutrix was mother of an eight year old son and was leading a unhappy married life. Annexure P-3 is copy of affidavit shown to be sworn by the prosecutrix on 27.05.2020 itself in this context. In her short reply, the prosecutrix has remained silent about executing the live-in-agreement Annexure P-2 and swearing Annexure P-3 and this indicates that infact, the parties had decided to stay in live-in-relationship as on 27.05.2020. It clearly appears to be a case of consensual relationship having turned sour afterwards. However, the FIR in this case has been lodged after a gap of more than one and half years from the date of executing the live-in-agreement. What has happened in between the parties in the intervening period is a mystery which will be solved only on the basis of evidence which comes on record before the learned trial Court. The prosecutrix is yet to be examined. The record reveals that the petitioner has criminal antecedents as many as five criminal cases are pending against him. The plea as taken by the complainant that there are chances of petitioner's intimidating herself and other witnesses if he is extended benefit of bail appears to be reasonable. DNA report is also awaited. The allegations against the petitioner are serious

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in nature. It has not been explained by him that there is also nothing on record to show that as on the date of alleged incident, the parties were still living in live-in-relationship or not. Therefore, it cannot be stated that as on the date of incident, there was any consensual physical relationship between the petitioner and the prosecutrix and it was not a case of rape as committed by the petitioner upon the victim as on 19.12.2021 and 20.12.2021. Keeping view the discussion as made above and looking into the nature of the allegations as levelled against the petitioner, his antecedents, the quantum of sentence which the conviction may entail and the entire facts and circumstances, I am of the considered opinion that the petition does not deserve to be allowed at this stage. Hence, the same is dismissed.

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

27.02.2024
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(MANISHA BATRA)
JUDGE

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