



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

208

CRM-M-24161-2024

Date of Decision: 23.05.2024

Tahir

.... Petitioner

Versus

State of Haryana

.... Respondent

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present: - Mr. Sarfraj Anjum Mor, 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. 195 dated 05.12.2023 registered under Sections 354-A, 376, 506, 323 and 201 IPC at Police Station Rozka Meo, District Nuh (Haryana).

The aforesaid FIR was registered on the basis of complaint moved by the victim herself and the brief facts as mentioned in para No. 2 of the impugned order dated 22.04.2024 (Annexure P-2), are reproduced as under:-

“2. Brief facts of the case are that the present FIR was registered on the complaint, moved by victim/prosecutrix against Tahir and Imran alleging therein that her husband is doing the work of labour and generally remains out of the house. Accused Tahir and Imran had an evil eye on the prosecutrix regarding which she made complaint to her husband and her husband requested that accused to behave properly. On the fateful day while the victim was working in



the fields, both the accused persons came there on Motorcycle and accused Tahir caught hold of her from behind and both the accused committed rape upon her. Accused clicked photographs and made videos of the alleged act and threatened to publish the same if the matter is reported to anyone. On 06.10.2021 accused Tahir called victim near a private school, where his house is situated and asked her to engage in sexual relations but she flatly refused. Thereafter on 17.10.2023 accused Tahir published the obscene photographs of the victim on internet and also extended threats to kill her. Hence, the complaint was moved to the police to take legal action against the accused.”

Learned counsel for the petitioner, *inter alia*, submits that the petitioner has been falsely implicated in the present FIR. It is stated that no specific date and time has been mentioned in the FIR, as to when the alleged incident had taken place. It is only in the statement of the victim recorded under Section 164 Cr.P.C. dated 18.12.2023 (Annexure P-4), that she had stated that the incident had taken place in the month of April, 2023. Thus, it is submitted that there is delay of around 08 months in lodging the present FIR.

Further, it is submitted that 02 persons were named in the present FIR i.e. the present petitioner-Tahir and his brother-Imran. However, upon investigation, brother of the petitioner was exonerated and challan has been presented only against the present petitioner. It is stated that motive behind registration of the present FIR is that brother of the petitioner had lodged an FIR against the husband of the victim/complainant bearing FIR No. 169 dated 19.10.2023 (Annexure P-5) registered under Sections 148, 149, 323, 324, 452 and 506 IPC at Police Station Rozka Meo, District Nuh Mewat, Haryana. It is contended that the present FIR (Annexure P-1) is a counter-blast to the above said



FIR. The petitioner has been in custody since 14.01.2024. The trial is likely to take a long time to conclude. Therefore, it is prayed that the 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 at the time of alleged occurrence, the victim was 23-year-old. It is admitted that in the FIR (Annexure P-1) no specific date or time of the incident has been mentioned, and it is only in the statement of the victim recorded under Section 164 Cr.P.C. (Annexure P-4) that she had stated that the incident took place in the month of April, 2023. It is submitted that after registration of the FIR, medico-legal examination of the victim was conducted on 07.12.2023. However, due to delay in lodging the FIR, the samples were not taken.

On instructions, learned counsel for the State informs that there are total 08 prosecution witnesses, only the Doctor has been examined so far and the next date of hearing before the learned trial Court is 27.05.2024. Further, on telephonic instructions from L/ASI Sarita, learned counsel for the State informs that in the cross FIR (Annexure P-5), husband of the victim/complainant has been found innocent.

Learned counsel for the State has filed custody certificate dated 22.05.2024, which is taken on record, as per which the petitioner has been in custody as an undertrial for a period of 04 months and 09 days. As per custody certificate, there is no other case against the petitioner.



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 of 04 months and 09 days undergone by the petitioner as an undertrial, 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 08 prosecution witnesses, only the Doctor has been examined so far, and no useful purpose would be served by further detention of the petitioner. Thus, the present petition is **allowed.**

The petitioner-Tahir S/o Daud, 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.

23.05.2024
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(NIDHI GUPTA)
JUDGE

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