

Neutral Citation No.2024:PHHC:017685

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

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CRM-M No.26332 of 2022 (O&M)
Date of decision: 07.02.2024

ASI Gurwinder Singh ... Petitioner

Vs.

State of Punjab ... Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Jasdeep Singh Gill, Advocate,
for the petitioner.

Ms. Ruchika Sabherwal, DAG, Punjab,
for the respondent-State.

Mr. G.S. Bhasin, Advocate,
for the complainant.

MANISHA BATRA, J.

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
0068	12.05.2021	Nathana, District Bathinda	376 of IPC (Sections 450, 309, 366 of IPC and Section 7 (a) of Prevention of Corruption Act, 1988 (For short “PC Act, 1988”) added later on and Sections 473 and 411 of IPC added at the time of framing of charges)

2. Brief facts of the case relevant for the purpose of disposal of the present petition are that the aforementioned FIR was registered by

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the prosecutrix on 12.05.2021 alleging therein that she was a widow and was residing with her 20 year old son who was studying in Adesh University in Bathinda. About three months back, while travelling in a vehicle, she had come in contact with the present petitioner and ever since, then he had been trying to make contact with her by making calls to her from two different phone numbers. On 06.05.2021, he along with one more police official namely, Jaswinder Singh had rounded up her son and implicated him in a case under the provisions of NDPS Act and he was detained in jail.

3. As per the further allegations as made in the FIR, on 10.05.2021, while the complainant was coming to meet her sister at Bathinda, the petitioner called her on phone and told her to come to meet him if she wanted to get her son released from custody. She was told to meet him at a particular chowk. The petitioner came there and making her board in his Ritz car, he took her towards a service road in Bhucho Mandi and started sexually harassing her. Then he forcibly committed rape upon her by assuring that he would get his son released from jail. On the next day, the petitioner again made calls to her that he would come to her during the night time. The complainant alleged that as she was quite scared, therefore, she disclosed about the entire incident to her relative Bhola Singh Maan on phone. On the same night, the petitioner reached at her house at about 11 PM in a motorcycle. He took her to a room and started committing rape upon her after taking off his clothing and by using a condom. She stated that as her relative

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Bhola Singh Maan had already been informed, therefore, he reached there and had recorded the act committed by the petitioner on his phone. He also captured him in a camera in a naked position. The petitioner tried to flee away after taking his clothing along with him. As the police had also been informed and reached there, therefore, he even tried to commit suicide by cutting his throat and stomach with a blade and blood had started oozing out from the cuts. He was taken to hospital and was medically examined. The complainant was also medically examined.

4. As per the further allegations, the statement of the prosecutrix was recorded under Section 164 of Cr.P.C. The offences under Sections 366 and 450 of IPC as well as Section 7 (a) of PC Act, 1988 were added during the course of investigation. The blood sample of the petitioner and clothing of the prosecutrix were sent for forensic examination and DNA test. After completion of necessary investigation and usual formalities, challan under Section 173 Cr.P.C. was presented against the petitioner. Offences under Sections 411 and 473 of IPC were also added subsequently and supplementary challan was filed against him.

5. The present petition has been filed by the petitioner submitting therein that there is inordinate and unexplained delay of 14 hours in lodging of the FIR and 10 hours in getting medical examination of the prosecutrix conducted. The version of the prosecutrix as given in the FIR is contradictory to her statement as

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recorded under Section 164 of Cr.P.C. and then in her sworn deposition as recorded in the Court, she has improved her version further which falsifies the entire case of the prosecution. He has further argued that on the basis of the allegations in the FIR, there was intimacy between the petitioner and the prosecutrix and it seemed that when she was caught red handed with Bhola Singh, then she concocted the whole story and as such, no offence of rape can be stated to have been made out as against the petitioner and if her version as recorded and even her statement under Section 164 Cr.P.C. is to be believed then she had trapped the petitioner by hatching a conspiracy along with the PW Bhola Singh to falsely implicate him in this case to secure release of her son. He has argued that the human semen that was detected on vaginal swabs of the victim has not matched with the genetic profile obtained from blood sample of the petitioner nor the human semen present on her salwar, kameej and underwear has matched with DNA and this fact also falsifies that she was ravished by the petitioner or was even attempted to be ravished. It is argued that the petitioner is in custody for a period of more than two and half years. There are more than 36 witnesses in the case who are yet to be examined. The trial is likely to take time. No useful purpose will be served by detaining the petitioner in custody anymore. With these broad arguments, it is argued that the petition deserves to be allowed.

6. Per contra, learned State counsel assisted by learned counsel for the complainant has argued that it was the petitioner who had

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implicated the son of the petitioner falsely in a case under NDPS Act and to exert pressure upon her to maintain sexual relationship with him and on the pretext of getting her son released, he had called her into his car and committed rape upon her on 10.05.2021 and then even on the night of 11.05.2021, he had come to her house with that intention. It is submitted that after lodging of the FIR, the petitioner has been getting pressure exerted upon the son of the complainant and PW Bhola Singh and they have filed petitions seeking protection apprehending danger of their lives and liberties which are pending. It is further argued that there are chances of the petitioner's intimidating the witnesses or tampering with the evidence if extended benefit of bail. Hence, it is argued that the petition does not deserve to be allowed.

7. I have heard learned counsel for the petitioner as well as learned State counsel assisted by learned counsel for the complainant and have perused the record.

8. As per the allegations levelled against the petitioner in the FIR, the petitioner had been following the prosecutrix with an intention to maintain sexual relationship with her from the last three months and to exert pressure upon her, on 06.05.2021 he had gone to her house and apprehended his son by falsely involving him in a NDPS Act and then on 10.05.2021 on the pretext of helping her in getting her son released from custody, he had taken her into his car and subjected her to rape. As per the allegations further levelled, on the night of 11.05.2021, he had come to the house of the prosecutrix at about 11 PM with an intention

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to commit sexual intercourse with her and as the prosecutrix had already informed her relative Bhola Singh who along with some other persons had kept him hidden in her house, therefore, while the petitioner started committing rape upon the prosecutrix, he had been apprehended by them and his activities were captured in the mobile phone of Bhola Singh. Learned State counsel has also produced on record Annexure R-3 a pendrive showing the video recording made by Bhola Singh through his mobile phone. The said video recording has also been seen by this Court and the contents of the same clearly show the petitioner to be present in the house of the prosecutrix in a totally naked condition and while trying to commit sexual intercourse with her. In her statement as recorded under Section 164 Cr.P.C., the complainant had supported the allegations as levelled in the FIR. So far as the argument that there are contradictions in the statements of the prosecutrix as recorded during different stages of the investigation and trial, the same would be seen by the learned trial Court at appropriate time.

9. Undisputedly, as per the FSL report, the human semen detected on vaginal swab, salwar, kameez and underwear of the prosecutrix did not match with the DNA profiling of the blood of the petitioner but at the same time, as per this report, the alleles present in the genetic profile obtained from the blood sample of the prosecutrix were accounted to be present in the mixed DNA profile obtained from her shirt and bra which as per the opinion of the doctors also amounts to

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evidence that the petitioner had come in physical contact with the prosecutrix. There are serious and specific allegations against the petitioner. The petitioner has been booked for commission of offences not only punishable under Section 376 of IPC but during the course of investigations, several other offences have been alleged to have been committed by him. The victim in her sworn deposition has deposed in support of case of prosecution. Keeping in view the nature of the allegations as levelled against the petitioner, the quantum of sentence which the conviction may entail and the entire facts and circumstances, I am of the considered opinion that the petitioner does not deserve to be given concession of bail. Hence, his plea for bail is rejected. The petition is dismissed.

10. It is clarified that observations made hereinabove shall not be construed as an expression of opinion on the merits of the case.
11. Miscellaneous application(s), if any, also stand disposed of.

07.02.2024
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(MANISHA BATRA)
JUDGE

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