

CRM-M-26143-2024

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2024:PHHC:075952



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

204

CRM-M-26143-2024

Date of Decision: 28.05.2024

Dalip Kumar

.... Petitioner

Versus

State of Haryana

.... Respondent

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present: - Mr. Munish Kamboj, Advocate for the petitioner.

Mr. Surinder Kumar Dagar, DAG, Haryana.

NIDHI GUPTA, J. (ORAL)

The petitioner has filed the present 2nd petition under Section 439 of the Code of Criminal Procedure, 1973, for grant of regular bail in case FIR No. 239 dated 03.09.2022 registered under Sections 328, 276(2)(n) and 506 IPC at Police Station Ding, District Sirsa.

The aforesaid FIR was registered on the basis of statement of the victim herself and the brief facts as mentioned in para No. 2 of the impugned order dated 16.05.2024 (Annexure P-1), are reproduced as under:-

“2. According to the complaint dated 03.09.2022 of the complainant, she lives at home because she has been suffering from arthritis for the last 11 years. She has undergone operation twice for xanthosis and stomach diseases and she has been taking medicines for the same. Her neighbour Dalip Kumar was on visiting terms at her house and on various occasions, she got the medicines brought from Dalip Kumar, who had brought proper medicines for her twice/thrice. But on 20.05.2022, she made an order for fetching medicines for arthritis through Dalip



Kumar as nobody was present in her house to bring said medicines. Dalip Kumar brought the said medicine and asked her to collect the medicine from his shop. At about 1.30/2.00 PM, the complainant went to the shop of Dalip Kumar to collect her medicines and there Dalip Kumar asked her that today he has brought some special medicine for her and after taking it, her pain of arthritis would vanish away within five minutes. However, after taking the said medicine, the complainant became unconscious. Dalip Kumar put off her clothes in his shop and committed rape upon her forcibly. When she regained some consciousness, she raised objection for doing wrongful act against her but Dalip Kumar asked her that he had made her video in his mobile while doing wrongful act with her and also clicked her nude photograph and that if she told about the incident to anyone, he would viral the same and would defame her and also threatened to kill her. He committed rape upon her repeatedly under the threat of making viral her video and photograph and he also threatened to do wrongful act against her time and again. Out of fear and due to her disease, she remained under depression for some time but later on, she mustered some courage and told about the incident to her sister Kanchan and brother-in-law Chet Ram.”

Learned counsel for the petitioner, *inter alia*, submits that the allegations levelled in the FIR are utterly false and fabricated. It is stated that as per the FIR, the date of incident is 20.05.2022, however, the present FIR was registered on 03.09.2022 i.e. almost 04 months thereafter. Learned counsel submits that in the present case an enquiry was conducted by the Deputy Superintendent of Police, concerned in which the present petitioner was exonerated as is reflected in the cancellation report dated 18.10.2022. However, the said report was not placed on record. It is further submitted that in the order dated 12.09.2023 (Annexure P-3) dismissing the first petition for grant of regular bail by this Court, it had been stated by learned counsel for the State that the petitioner had clicked obscene photographs and shot nude



video of the complainant also and had threatened her, however, the said mobile phone has not been recovered by the Investigating Agency, therefore, the said allegations are false. It is also stated that supplementary challan was presented on 27.08.2023 and the charges were framed on 04.10.2023.

Learned counsel for the petitioner further refers to the *zimni* orders dated 04.01.2024 and 10.04.2024 from which it is evident that despite issuance of bailable warrants, the complainant/victim is not appearing in the matter for recording her evidence and now, the next date of hearing before the learned trial Court is 25.07.2024, for evidence of the prosecution. The petitioner has been in custody since 12.05.2023 i.e. for over 01 year. Thus, it is prayed that he be released on regular bail.

Per Contra, learned counsel for the State vehemently opposes the prayer for grant of regular bail and has filed custody certificate dated 27.05.2024, which is taken on record, as per which the petitioner has been in custody as an undertrial for a period of 01 year and 15days. As per custody certificate, there is no other case against the petitioner.

On instructions from ASI Kulwant Kaur, learned counsel for the State submits that the FSL report in the present case is negative and out of total 20 prosecution witnesses, none has been examined so far; and the next date of hearing before the learned trial Court is 25.07.2024 for recording the evidence of the prosecution.

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 01 year and 15 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 20 prosecution witnesses, none 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-Dalip Kumar S/o Jot Ram, 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.

28.05.2024
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(NIDHI GUPTA)
JUDGE

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