

221

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-31701-2023 (O&M)

Date of Decision: 23.04.2024

Harsh Kumar

.. Petitioner

Vs.

State of Haryana & Anr

..Respondent

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Samay Sandhawalia, Advocate for
Mr. Anil Mehta, Advocate for the petitioner.

Ms. Priyanka Sadar, AAG, Haryana.

Mr. Shailender Singh Gill, Advocate and
Mr. Sanjeev Buttar, Advocate
for the complainant.

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SUMEET GOEL, J. (Oral)

1. Present petition has been filed under Section 439 Cr.P.C. for grant of regular bail to the petitioner in case bearing FIR No.98 dated 26.09.2022, registered for the offences punishable under Section 6 of Protection of Children from Sexual Offence Act, 2012 and Sections 216, 354-B, 376-DA and 506 IPC at Police Station Women Police Station, Kaithal.
2. The case set up in the FIR in question (as set out by the petitioner in the present petition) is as follows:-

“I, (name), aged about 15 years, daughter of xxxx (name) and a resident of xxxx. I am studying in 10 Class. Deepak son of Subhash Chand, caste Rod, resident of village Barsana used to visit her house, like their family members. One day, on finding an opportunity, he picked the phone of her grandfather and send obscene messages by that number on his mobile and took a screen- shot of it, with him. Th mjjwzsereafter, Deepak

started blackmailing him with obscenity. Deepak pressurized her that in case she will not meet her, he will viral the messages. Due to fear of defame, she went to meet him. Harsh was also with him. He gagged her mouth and after threatening her, Deepak took her to his bara. There, Deepak and Harsh committed rape on her by extending threat to her and prepared her video. Under fear, she did not disclose this fact to her parents. After this incident, Deepak and Harsh blackmailed her and called her again. Except Deepak and Harsh, their other three associates namely Sahil, Sachin and Goldy were also present. All these three persons made pressure upon her under the pretext of viraling the video and raped her. The incident is of dated 20.11.2020. They, all threatened her to keep mum, otherwise they will viral the video. After that incident also, they continued to blackmail her and extended threat to injure her life. She refused to meet them. On this, they viralled her obscene video and she is very much disturbed and she is socially defamed in the society."

3. Learned counsel for the petitioner has argued that the petitioner is in custody since 27.09.2022. Learned counsel for the petitioner has submitted that charges have been framed on 15.03.2024 against the present petitioner under Section 354-B of IPC and Section 66 of Information Technology Act and the petitioner has not been arraigned as an accused for an offence under Section 376 of IPC. Learned counsel for the petitioner has further argued that there is an inordinate delay of about 01 year and 10 months in registration of the FIR which is inexplicable. Learned counsel for the petitioner has further argued that there was enmity between co-accused Deepak and the family of the prosecutrix and the petitioner has been falsely implicated in the FIR in question on account of being an acquaintance of the co-accused Deepak. Thus, regular bail is prayed for.

4. Learned State counsel as also learned counsel for the complainant have opposed the present petition arguing that the allegations raised are serious in nature and thus the petitioner does not deserve the concession of the regular bail.

5. I have heard counsel for the parties and have gone through the available records of the case.

6. The petitioner was arrested on 27.09.2022 whereinafter investigation was carried out & challan was presented on 06.12.2022. It is not in dispute that the petitioner has been arraigned as an accused only for offences under Section 354-B IPC and Section 66 of Information Technology Act. Total 25 prosecution witnesses have been cited and culmination of the trial will take its own time. The rival contention of the learned counsel for the parties; as to whether there is inordinate delay in registration of the FIR and whether the petitioner has been falsely implicated in the FIR in question on account of there being enmity between co-accused Deepak and family of the victim; shall be gone into during the course of trial. This Court does not deem it appropriate to delve deep into these rival contentions, at this stage, lest it may prejudice the trial. Nothing tangible has been brought forward to indicate the likelihood of the petitioner absconding from the process of justice or interfering with the prosecution evidence. The petitioner is stated to be a young man aged about 20 years with no criminal antecedents. As per the custody certificate dated 22.04.2024 filed by the learned State counsel, the petitioner has suffered incarceration for more than 1 year and 6 months. Suffice to say, further detention of the petitioner as an undertrial is not warranted in the facts and circumstances of the case.

7. In view of totality of factual matrix of the present case, the instant petition is allowed. Petitioner is ordered to be released on regular bail on his furnishing bail/surety bonds to the satisfaction of the Ld. concerned CJM/Duty Magistrate. However, in addition to conditions that

may be imposed by the concerned CJM/Duty Magistrate, the petitioner shall remain bound by the following conditions:-

- (i) The petitioner shall not mis-use the liberty granted.
- (ii) The petitioner shall not tamper with any evidence, oral or documentary, during the trial.
- (iii) The petitioner shall not absent himself on any date before the trial.
- (iv) The petitioner shall not commit any offence while on bail.
- (v) The petitioner shall deposit his passport, if any, with the trial Court.
- (vi) The petitioner shall give his cellphone number to the Investigating Officer/SHO of concerned Police Station and shall not change his cell-phone number without prior permission of the trial Court/Illaq Magistrate.
- (vii) The petitioner shall not in any manner try to delay the trial.

8. In case of breach of any of the aforesaid conditions and those which may be imposed by concerned CJM/Duty Magistrate as directed hereinabove or upon showing any other sufficient cause, the State/complainant shall be at liberty to move cancellation of bail of the petitioner.

9. Ordered accordingly.

10. Nothing said hereinabove shall be construed as an expression of opinion on the merits of the case.

11. Since the main case has been decided, pending miscellaneous application, if any, shall also stands disposed off.

23.04.2024

(SUMEET GOEL)
JUDGE

Jasmine Kaur

Whether speaking/reasoned	Yes	No
Whether reportable	Yes	No