

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

214

CRM-M No.31288 of 2023
Date of Decision: 18.03.2024

Jeetu ... Petitioner

Versus

State of Haryana ... Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Mohan Sharma Advocate,
for the petitioner.

Ms. Nidhi Garg, AAG, Haryana.

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.	Police Station	Sections
162	Mansa Devi Complex Panchkula	313, 323, 328, 376 (2) (n), 376-D and 506 of IPC

2. Brief facts of the case relevant for the purpose of disposal of this petition are that the aforementioned FIR was registered on 04.11.2022 on the basis of a written complaint filed by the prosecutrix "B" (name withheld) alleging therein that she had come into contact with Kiran, sister of accused Vijay @ Sonu sometime back. Friendly relations had been developed between them and they used to visit each other's house. One day, Kiran invited the prosecutrix to her house for celebration of birthday of her younger brother Deepak. The prosecutrix had gone there. Kiran along with her mother had gone to buy something from market and in their absence, accused Vijay @ Sonu offered her some cold

Neutral Citation No.2024:PHHC:038758

drink on drinking which, she lost senses as it was containing some intoxicating substance. She alleged that in that condition, the accused Vijay established physical relations with her and also clicked her photographs in objectionable condition and made video as well in his mobile phone. When she regained consciousness, the accused Vijay had shown those photographs and video to her and told her not to disclose about the incident to anybody and otherwise threatened to upload the same on social media and to show that to her husband. Out of fear, she did not disclose about the incident to anybody. She alleged that the accused Vijay kept on making physical relations with her by giving threats to her. One day, his father had also seen him while doing so and even he ravished the victim forcibly after sending the accused Vijay out of the room.

3. The prosecutrix further alleged that subsequently, the accused Vijay started demanding money from her and on her expressing inability to give the same, she was forced by him to go to **his friends** who also sexually exploited her. The accused Vijay used to take money from them as well. She alleged that as on 16.10.2022 also, the accused Vijay had come to her for demanding money and for the purpose of her sexual exploitation and it was on her refusal that he left while extending threats to her. She submitted that she was fed up from the atrocities of the accused Vijay and, therefore, prayed for taking action against the culprits. On the basis of these allegations and after registration of FIR, investigation proceedings were initiated. The victim was medically examined. Her statement under Section 164 of Cr.P.C. was recorded on 05.11.2022 wherein, she reiterated the same allegations as levelled at the time of lodging of FIR.

4. As per the allegations, subsequently the prosecutrix disclosed the

Neutral Citation No.2024:PHHC:038758

name of the petitioner and co-accused Raja Ram as the persons who too had committed rape upon her by giving money to the co-accused Vijay. The petitioner was arrested on 30.11.2022 and was identified by the prosecutrix as one of the friends of the accused Vijay who had made physical relations with her against her will. The co-accused Vijay @ Sonu and Raja Ram were also arrested. Accused Kamlesh could not be arrested. After completion of necessary investigation and usual formalities, challan was presented in the Court and the petitioner along with co-accused Vijay @ Sonu and Raja Ram is facing trial for commission of offences punishable under Sections 201, 204, 323, 376 (2) (n), 376-D, 506 and 354-C of IPC . He had moved an application for grant of bail before learned trial Court which was dismissed vide order dated 14.06.2023.

5. It is argued by learned counsel for the petitioner that he has been falsely implicated in this case. He was neither named in the FIR nor in the statement recorded by the prosecutrix under Sections 161 or 164 of Cr.P.C. and has been implicated later on the basis of supplementary statement of the victim. The story of the prosecutrix is highly unnatural, unbelievable and not worthy of any credit. The co-accused Raja Ram against whom also she had levelled allegations of being ravished, has been extended benefit of bail as in her supplementary statement subsequently recorded before the police, she had exonerated him from the allegations as levelled against him and even in her partly recorded sworn deposition, by changing her version, she stated that the accused Raja Ram had simply abused him. Infact, the petitioner has no connection either with the co-accused or with the prosecutrix. The story narrated by the prosecutrix that he had committed rape upon her in the month of June 2022 at his house is not true as he had

Neutral Citation No.2024:PHHC:038758

left that address which as per the prosecution was place of occurrence, much before the month of June 2022. The trial is likely to take time. His custodial interrogation is not required. It is not believable that the prosecutrix who is a mature lady having four children could be forced to maintain physical relationship with the co-accused or even with the petitioner without her consent. With these broad submissions, it is urged that the petition deserves to be allowed and he deserves to be given concession of bail.

6. Status report has been filed by the respondent-State as per which there are serious allegations against the petitioner. He had been identified by the prosecutrix as one of the person who had committed rape upon her in the month of June 2022 at his own house on the asking of the co-accused Vijay. It is submitted that the trial has commenced and there is nothing on record to show that there would be any undue delay in conclusion of the same. Therefore, it is urged that the petition does not deserve to be allowed.

7. I have heard learned counsel for the petitioner and learned State counsel at considerable length and have gone through the record.

8. Though at the stage of considering a plea for grant of bail, it is not feasible for the Court to draw any conclusion, much less to return any finding as the findings on the allegations must await a thorough assessment and evaluation of evidence to be led by the parties. However, in the present case, even on considering the allegations as levelled in the FIR, to be correct on the face of record, there are several circumstances which raise a question as to the truthfulness of the allegations. First of all, so far as the allegation that the co-accused Vijay had administered some intoxicating substance to her in the month of March/April 2022, ravished her and took her

Neutral Citation No.2024:PHHC:038758

objectionable photographs and prepared videos, when she had gone to celebrate birthday of his brother in his house, is concerned, it appears to be quite improbable and unnatural because it cannot be assumed that the co-accused could in a position to ravish the prosecutrix in a place where the birthday of his brother was being celebrated. Then, the prosecutrix has levelled allegations as to her being repeatedly raped by the co-accused Vijay and his father without mentioning the exact date, month, year and place where such acts were done. She had alleged in the FIR that the co-accused Vijay had started getting her sexually exploited from his friends also by taking money from them. The petitioner was not named in the FIR and even in the statement as recorded by the prosecutrix under Section 164 of Cr.P.C. His name and name of co-accused Raja Ram were taken by her in a supplementary statement recorded by the prosecutrix. Interestingly, she again recorded a supplementary statement after sometime during investigation thereby exonerating the abovesaid Raja Ram. Copy of her sworn deposition has been placed on record by learned counsel for the petitioner and a perusal of the same reveals that while appearing as a witness, she disclosed that the accused Raja Ram had only abused her and had not committed rape upon her. Therefore, it is apparent that she has changed her version with regard to complicity of accused Raja Ram in the subject crime.

9. Proceeding further, she had not disclosed in her statement as on which particular date, month and year, the petitioner had committed rape upon her. From her sworn deposition, it is revealed that she stated that the petitioner had committed rape upon her in his own house whereas the stand taken by the petitioner is that the place of occurrence as demarcated by the

Neutral Citation No.2024:PHHC:038758

prosecutrix had been left by him two years back. Strangely, she is shown to have stated in her sworn deposition that she disclosed about the factum of her being sexually exploited by the co-accused and the petitioner to her husband only on 08.10.2022 and that too when she had a quarrel with the accused Vijay. Her statement to this effect rather shows that she in connivance with accused Vijay had been involved in maintaining sexual relationships randomly and only after having a quarrel with him, she has involved the co-accused and then even the petitioner who is alleged to be a friend of the co-accused Vijay, in this case. There is no medical evidence on record to show that the petitioner had ravished the victim. In view of the discussion as made above coupled with the fact that the trial is likely to take time, the petitioner is in custody since 30.11.2022 and he was not named in the FIR and upon conspectus of the foregoing consideration, I am persuaded to admit the petitioner to bail pending trial subject to his furnishing personal/surety bonds to the satisfaction of the learned trial Court/Illaq Magistrate.

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

18.03.2024
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(MANISHA BATRA)
JUDGE

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