

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

229

CRM-M-33717-2023 (O&M)

Date of Decision: 27.02.2024

DEEPU

....Petitioner

VERSUS

STATE OF HARYANA

....Respondent

CORAM : HON'BLE MRS. JUSTICE MANISHA BATRA

Present : Sh. Virender Soni, Advocate for the petitioner.

Mr. Neeraj Poswal, AAG, Haryana.

MANISHA BATRA, J. (Oral)

1. Through the instant petition, prayer has been made for grant of regular bail to the petitioner in case arising out of FIR No. 58 dated 05.02.2021, under Sections 323, 354-B, 376, 452 IPC, registered at Police Station Shivaji Colony, District Rohtak on the basis of a written complaint by complainant-Hari Singh alleging therein that he used to sell chowmien (chinese eatable) at a cart. He used to reside along with his wife and his son. On 05.02.2021 at about 8.30 PM, while he was going towards his house and when he was about to reach his house, he heard some noises raised by his wife on hearing so, he along with landlady of the house namely Santra rushed towards his room. He opened the same and found that the petitioner was committing wrong act with his wife and the clothing worn by her was torn. On the basis of his statement, the above mentioned FIR was registered. Investigation proceedings were initiated against the petitioner. The victim was medico legally examined. Her statement was recorded under Section

164 Cr.PC wherein she stated that while she was sleeping along with her child, the petitioner entered inside and while saying that he liked her, he pressed her mouth and put off her clothing. She stated that she had raised alarm, on hearing which, her uncle had reached there and had caught the present petitioner. The petitioner was arrested on 06.02.2021. He was medico legally examined. After completion of necessary and usual formalities, challan under Section 173 Cr.PC was presented in the Court and presently he is facing trial for the commission of the aforesaid offences.

2. The present petition has been filed by the petitioner and it is argued by the counsel for the petitioner that he has been falsely implicated in this case. The petitioner is in custody for a period of more than three years. The victim and her husband are untraceable since long, despite the fact that summons and warrants are issued against them by learned Trial Court. Their presence has not been secured till date. There are no chances of their appearance before the Court for recording their depositions and out of 19 witnesses only 8 prosecution witnesses have been examined so far. The trial is likely to take considerable time. The Forensic evidence has not supported the version of the prosecution. Even the testimony of PW-4 Santra who was one of the material witness of the prosecution does not prove that the victim had been subjected to rape by the petitioner. At the most, it could be stated a case of sexual harassment of the victim by the petitioner. Learned counsel for the petitioner has also argued that the parcels containing the semen of the petitioner as well as clothing of the prosecutrix were sent to FSL examination together on the same day and the possibility of tampering

with those parcels can not be ruled out. It is therefore argued that the petitioner deserves to be extended of benefit of bail.

3. Status report has been filed by respondent-State. Learned State counsel has vehemently argued that allegation against the petitioner are grave in nature. The DNA of the semen detected on the salwar of the prosecutrix has matched with the DNA blood profile of the petitioner, thereby showing that the petitioner had committed an act of sexual intercourse with the victim. It is therefore, argued that the petition does not deserve to be allowed.

4. I have heard learned counsel for the petitioner as well as learned State counsel and have gone through the record.

5. As per allegations, on night of 05.02.2023, the petitioner had criminally trespassed into the house of the victim, had sexually harassed her and subjected her to rape after tearing off her clothing. The petitioner is in custody for a period of about three years. Neither the victim nor her husband has been examined so far. Learned counsel for the petitioner has placed on record copies of the zimny order showing that the efforts being made by the learned Trial Court to secure their presence have not proved to be futile so far. Neither from the statement of the prosecutrix as recorded under Section 164 Cr.PC nor from the testimony of PW-4 Santra who is alleged to be an eye witness to the incident, it is revealed that offence of rape had been committed upon her by the petitioner. The trial is likely to take time as the star witnesses are not traceable. The presence of the DNA profile of the petitioner on the clothing of the victim cannot be stated to be conclusive proof of the fact at this stage to say that it was a case of rape. Taking all

these circumstances into consideration, I am of the considered opinion of the case that the petitioner deserves to be released on bail. Accordingly, the petition is allowed and the petitioner is directed to be released on bail subject to his furnishing bail bonds/surety bonds to the satisfaction of the Trial Court/Additional Sessions Judge (Duty) concerned.

6. However, the Prosecution will always be at liberty to apply for cancellation of bail in case the petitioner is found to be misusing the concession of bail in any manner.

7. It is also made clear that any observation made herein shall not be treated as an expression of opinion on the merits of the case.

8. Disposed off. Pending applications, if any, also stand disposed off.

(MANISHA BATRA)
JUDGE

27.02.2024

Deepak Patwal

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO