



CRM-M-36668-2023 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-36668-2023 (O&M)

Reserved on: 13.05.2024

Date of Pronouncement:- 29.05.2024

RAJ KUMAR

.....PETITIONER

Vs.

STATE OF PUNJAB

.....RESPONDENT

CORAM: HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN

(As on the reserved date)

Present: Mr. R.S. Randhawa, Advocate, for the petitioner.

Ms. Sakshi Bakshi, A.A.G., Punjab.

Mr. Harsh Chopra, Advocate, for the complainant.

HARPREET KAUR JEEWAN, J.

1. The present petition has been filed under Section 439 Cr.P.C. for grant of regular bail to the petitioner in case bearing FIR No. 161 dated, 19.05.2023 (Annexure P-1) under Sections 376 and 420 of the IPC read with Section 120-B thereof [Sections 376 (2) (n) and 506 thereof were added later on) registered at Police Station Tripuri Patiala.

2. As per the FIR, the complainant has alleged to have visited the shop of the co-accused (Yadwinder Singh) of the petitioner for making the driving license of her daughter who is residing in Canada. Yadwinder Singh demanded a sum of ₹50,000/- from the complainant for the said work, out of which ₹10,000/- was paid at the spot and the remaining ₹40,000/- was paid at 06:00 p.m. in the evening. Thereafter, Yadwinder Singh started involving himself in conversation with the complainant and also did obscene acts. After that both the petitioner and his co-accused Yadwinder



Singh took the complainant in a deserted place at Omaxe Colony, Sirhind road, Patiala in his car where both the petitioner and his co-accused Yadwinder Singh committed rape upon the complainant by threatening her with revolver during the period from 08:00 p.m. to 09:00 p.m. Two days after that the complainant was called to take license of her daughter by the co-accused Yadwinder Singh. The petitioner Raj Kumar kept sitting outside the shop and co-accused Yadwinder Singh again committed rape upon the prosecutrix and handed over the driving license of her daughter mentioning the address of Arunachal Pradesh. The complainant sent the said driving license to her daughter but the said driving license was found to be fake.

2.1 The complainant again approached the co-accused of the petitioner complaining about the said facts who assured her that the driving license would be made again. Yadwinder Singh further allured the complainant that he can arrange for a work visa for the complainant and her husband and for that purpose he asked for ₹3,00,000/- as fee that would be charged for sending him to Canada where the daughter of the complainant is residing. The complainant handed over the copies of the passport to the co-accused of the petitioner. However, the application for visa was rejected by the Embassy in May 2022. The co-accused of the petitioner took the complainant in a '*Mandir*' and studio nearby that '*Mandir*'. By putting '*Sindoor*' in her forehead, the petitioner-Raj Kumar clicked the photographs in his mobile phone and the co-accused-Yadwinder Singh also took her to a studio and got the photographs clicked. The co-accused Yadwinder Singh further told that these photographs prove his marriage with the complainant and he would keep her as his wife after



giving a divorce to his wife. However, the complainant did not agree but on reaching Patiala, Yadwinder Singh told that he has filed a divorce petition against his wife. On the basis of the aforesaid photographs by threatening the complainant, Yadwinder Singh had been taking the complainant to various hotels and used to commit rape upon the complainant. The complainant disclosed the facts to her husband and they decided to take the help of her relative, as such, disclose these facts to one of the relative Bahadur Singh who also talked to the co-accused Yadwinder Singh that he should stop threatening the complainant. However, the said talk resulted into no effect. Ultimately, the complainant reported the matter to the police.

3. Learned counsel for the petitioner *inter alia* contends that the petitioner is in custody since 21.05.2023. He is not the main accused even as per the contents of the FIR. He is ready to face the trial.

4. The State counsel has opposed the present petition while referring to the status report, dated 12.10.2023, filed by way of an affidavit of Sh. Darpan Ahluwalia, IPS, Assistant Superintendent of Police, Derabassi, SAS Nagar-cum-Chairman, SIT, wherein it is contended that the statement of the complainant was recorded under Section 164 Cr.P.C. on 20.05.2023. As per the police file, the complainant refused for her medical examination. This fact has been confirmed that the petitioner was arrested on 21.05.2023. However, during further investigation and after considering the statement of the prosecutrix under Section 164 Cr.P.C. the final report ('*challan*') under Section 173 Cr.P.C. has been prepared against the petitioner-Raj Kumar on 12.07.2023 under Sections 376 (2) (n), 420 and 506 of the IPC.

4.1 It is further alleged in the status report that on the basis of an



application moved by Hxxx, the wife of the co-accused (Yadwinder Singh), a Special Investigation Team was constituted. The team has visited the crime spots, i.e. “Desolated place near, Oxame Colony, Patiala, Hotel Jaggi at Patiala Sirhind road near Madhopur Chowk and Hotel Jashan at Rajpura-Sirhind road” and the record was collected from the above said hotels. As per the documents, the co-accused of the petitioner-Yadwinder Singh had taken the complainant 08 times to Hotel Jashan and 03 times to Hotel Jaggi. He has used his car bearing registration No. DL8CQ-9406 for committing the said crime. During the investigation, the co-accused of the petitioner-Yadwinder Singh has presented his photographs along with his wife Hema Sharma and alleged that the photographs presented by the complainant along with Yadwinder Singh stated to be clicked at Durga Studio, Naina Devi Temple, Himachal Pradesh are tampered/morphed. The said contentions raised on behalf of behalf of Yadwinder Singh which verified from the photographer and the statement of the photographer was also recorded who disclosed that the Yadwinder Singh came to his shop along with the complainant in May 2022 whereas he also came along with his wife recently in June 2023. This fact has also verified from the calls details of the complainant, the co-accused of the petitioner-Yadwinder Singh and his wife Hema Sharma.

4.2 During the investigation by the SIT, no incriminating evidence was found against the petitioner. The tower location of the petitioner-Raj Kumar do not match with the CDR and the tower location of the mobile phone of the accused-Yadwinder Singh or with the complainant. After conducting the investigation, the SIT concluded that there is lack of evidence against the petitioner-Raj Kumar, as such, interim report of the



investigation, dated 29.08.2023, was submitted by the SIT, which was approved by the Director, Bureau of Investigation, Punjab, as such, the Senior Superintendent of Police, Patiala, directed that the petitioner-Raj Kumar be discharged from the case.

5. Counsel for the complainant has opposed the present petition on the ground of gravity of allegations of sexual abuse against the complainant. It was alleged that the investigation agency is trying to help the petitioner.

6. I have heard the aforesaid contentions.

7. Without commenting on the actual merits of the case and keeping in view the fact that the petitioner is in custody since 21.05.2023; the conclusion of the trial will take time; the main allegations are not against the petitioner, no useful purpose would be served by keeping the petitioner in custody during the trial, as such, the present petition is allowed. The petitioner is ordered to be released on regular bail, subject to his furnishing adequate bail bonds and surety bonds to the satisfaction of the trial Court/Duty Magistrate concerned.

8. However, it is made clear that nothing expressed hereinabove would be construed to be an expression of opinion on merits of the case.

09. Pending miscellaneous applications, if any, also stand disposed of.

May 29, 2024	(HARPREET KAUR JEEWAN)
nitin	JUDGE
Whether Speaking	Yes
Whether Reportable	No