

2024:PHHC:035078

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

213+104

CRM-M-46429-2023 (O&M)
Date of decision: 12.03.2024

Harish Chadda

....Petitioner

V/s

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr.Deepak Arora, Advocate,
for the petitioner.

Mr. Anup Singh, AAG, Punjab.

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.186 dated 29.05.2023, registered for the offence punishable under Section 376 of IPC at Police Station Islamabad, District Amritsar.

2. The case set up in the FIR in question is as follows:-

"I am resident from above said address and work in the film line. I was married to Atul Chawla from Amritsar in the year 2016. But we were not on good terms with each other. Then I divorced in the court in 2016. About 5 years ago, I came in contact with Harish Chadda son of Subhash Chandra, resident of the house No. 3273/14, Street No. 09, Greater Haripura, Amritsar during the course of my film line. I was very upset at that time. I became friends with Harish Chadda and I told Harish Chadda that my divorced case was pending with my husband, then Harish Chadda told that he is also a divorcee and we both can easily realize the pain of each other. Then Harish Chadda has started

meeting me more often. Then after sometime Harish Chadda told me that whenever you get divorced then we both will get married because he likes me but at that time I did not give any answer to Harish Chadda. Thereafter he started sympathizing with me more. Then I got involved in the talks of Harish Chadda and after some time I got divorced from Atul Chawla. Then Harish Chadda introduced me to his family and Harish Chadda's mother and father told me that Nisha we like you and we will get you married. Then I started frequently visiting to the house of Harish Chadda. Then on September 2021, Harish Chadda took me to his home. At that time, his mother Kanta Rani and sister Sonia were present at Harish Chadda's house, after serving me tea/ water, his mother Kanta Rani and Sister Sonia went to market for some work. We both were left alone in the house. Then Harish Chadda asked me to get physical relations with him but I told him that I will not do this thing before marriage. But Harish Chadda did not agree despite my refusal and he forcibly established physical relationship with me. He convinced me that he will perform marriage with me only. Regarding this entire issue I told all this to Harish Chadda's mother and sister when they came back home from the market and both of them assured me that they will get our marriage done. Then Harish Chadda had been continuously physically abusing me. Then I got pregnant in October 2021. I talked the same to Harish Chadda and he said that his father Shubash Chander is not well and could not perform marriage at this stage and told me to abort the pregnancy and he also gave medicine to me. Then he was not having due money for the treatment of his father Subhash Chander. Then I had given my one gold chain and 2 rings and around Rs. 5 lakh rupees in cash to Harish Chadda for the treatment of his father. At that time the mother of Harish Chadda namely Kanta was present at that time. Thereafter when I asked to Harish Chadda for performing marriage, then he started making excuses. Then Harish Chadda's father Subhash Chandra had died on 6.3.2022. Then he again started avoiding me while stating that his father had died recently and it does not look nice and we cannot solemnize marriage at this stage but Harish Chadda had been forcibly raping me

continuously for almost 2 years. Then Harish Chadda started telling me that we should get married after my father's anniversary which is on 22nd November 2022 and they will perform the marriage after the same. Thereafter, when I pressuring him for the marriage then Harish Chadda openly refused to perform marriage with me by stating that he would not solemnize marriage with me now and even later on. Even thereafter Harish Chadda in order to defame me had created fake ID on Instagram in the name of Karunakashyap 1909 and while updating my photograph on the same in the said ID it has been written interested in young male contact number 98721-48388. Thereafter, I started receiving phone calls from unknown people and thereafter when I checked the ID, my photo was uploaded and the mobile number of Harish Chadda was being shown. The said Harish Chadda had totally spoiled my life. Legal action should be taken against him and justice should be given to me.”

3. Learned counsel for the petitioner has argued that the petitioner is in custody since 29.05.2023 whereinafter investigation has been carried out & trial is underway. Learned counsel for the petitioner has argued that there was consensual relationship between the petitioner & the victim which factum is clearly decipherable from the FIR in question as also from the testimony of the victim recorded during the course of trial as PW-1. Learned counsel for the petitioner has further argued that the charges framed against the petitioner are under Section 376 of IPC only and no charge has been framed by the trial Court against him under Section 67 of the Information Technology Act, 2000 or Section 509 of IPC. Thus, regular bail is prayed for.

4. Learned counsel for the State has opposed the present petition by arguing that the allegations raised are serious in nature and, thus, the petitioner does not deserve the concession of 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 29.05.2023 whereinafter investigation was carried out & challan was presented on 21.07.2023. Total 15 prosecution witnesses have been cited, out of which the material witnesses i.e. victim/complainant as also brother of the victim have been recorded as PW-1 and PW-2 respectively. The rival contention of the learned counsel for the parties as to whether there was consensual relationship between the petitioner and the victim which turned sour later on due to supervening circumstances 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 remaining prosecution evidence. As per the custody certificate dated 11.03.2024 filed by the learned State counsel, petitioner has suffered incarceration for about 09 and a half months & is not shown to be involved in any other case. Suffice to say, in the entirety of the facts and circumstances of the case, further detention of the petitioner as an undertrial is not warranted.

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 learned 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.

(SUMEET GOEL)
JUDGE

March 12, 2024
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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No