

208 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-52147-2023 (O&M)

Date of Decision: 29.01.2024

SHUNTY

.....PETITIONER

Vs.

STATE OF HARYANA

.....RESPONDENT

CORAM: HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN

Present: Mr. G.C. Shahpuri, Advocate, for the petitioner.
Mr. Amrik Singh Narwal, D.A.G. Haryana.
Mr. Pardeep Panwar, Advocate, for the complainant.

HARPREET KAUR JEEWAN J. (ORAL)

1. The instant petition has been filed under Section 438 Cr.P.C for grant of anticipatory bail to the petitioner in case FIR No. 140 dated 03.07.2023, registered under Sections 328, 376 (2) (N), 379, and 506 of the IPC, registered at Police Station Buria, District Yamuna Nagar.

2. The FIR was registered at the instance of the prosecutrix with the allegations that the petitioner used to talk to her and in December 2022, he came to his house and she was raped after the petitioner made her to eat a sweet which was having some intoxicant. On 16.01.2023 in the day time when he was alone, the petitioner again come to her house and committed rape upon her forcibly. She was repeatedly raped by the petitioner and his co-accused.

3. Counsel for the petitioner *inter alia* contends that petitioner is married and having two children. He submits that the FIR was initially registered at the instance of the husband of the prosecutrix. In the said FIR, the statement of the prosecutrix dated 24.04.2023 (Annexure P-3), under

Section 164 Cr.P.C. was recorded by the Judicial Magistrate Ist Class, wherein she testified that she had an altercation with her husband and therefore she had gone outside and she wanted to go back with her husband at that point of time.

4. Thereafter, a subsequent FIR No. 140 dated 03.07.2023, i.e. the FIR in question was registered in a different police station at the instance of the prosecutrix with the allegations that the petitioner had committed rape upon the prosecutrix by giving her some intoxicants substance. It was contended that the complainant-prosecutrix is major and a married female. A false FIR has been registered against the petitioner. The petitioner has joined the investigation in compliance of the aforesaid order dated 06.11.2023 passed by the co-ordinate Bench of this Court.

5. Learned counsel appearing on behalf of the respondent-State on instructions from the police official who is present in Court today to assist him confirms that the petitioner has joined investigation and also contends that his custodial interrogation is not required.

6. The counsel appearing on behalf of the complainant has opposed the petition on the ground of the gravity of the allegations made in the FIR.

7. The petitioner was granted interim bail as per the order dated 06.11.2023 passed by a co-ordinate Bench of this Court. The relevant portion of the said order reads as under:-

XXXX XXXX XXXX XXXX

“Learned counsel for the petitioner would contend that the petitioner and the complainant were in a consensual relationship and that earlier also the complainant had left her house and had gone with the

present petitioner which is apparent from FIR No.134 dated 14.04.2023 under Sections 363, 366 IPC registered at Police Station Mullana, District Ambala lodged by her husband wherein it was stated that his wife had gone with the present petitioner. Subsequently, her statement under Section 164 CrPC was recorded in the said FIR wherein she stated that she had left the house because she had an altercation with her husband. There was not a word said about the present petitioner. Subsequently, the present FIR was lodged. The last incident, as alleged in the FIR, is dated 21.04.2023 whereas the FIR itself was registered on 03.07.2023. Medical of the complainant was conducted on 06.07.2023.

Notice of motion.

Ms. Mahima Yashpal, DAG Haryana accepts notice on behalf of respondent-State of Haryana. Mr. Pardeep Panwar, Advocate has put in appearance on behalf of the complainant and has also filed his power of attorney.

Learned State counsel has filed a reply by way of affidavit of Abhilaksh Joshi, HPS, Deputy Superintendent of Police, Jagadhri (Yamuna Nagar). Let the same be scanned and tagged with the case file.

List on 29.01.2024.

Meanwhile, the petitioner is directed to join investigation as and when called for. In the event of arrest, the petitioner shall be admitted to interim bail on furnishing personal bonds with adequate surety to the satisfaction of the Arresting Officer.....”

8. The allegations in the FIR and the counter-allegations raised by the petitioner are subject matter of trial. The petitioner is married having

children and the allegations that she was repeatedly raped subject to sexual assault by the petitioner is also a matter of trial. No FIR was registered after the first incident which is alleged to be of the year 2022. The delay in lodging the FIR and the explanation for the said delay is also a matter of trial. The petitioner has joined investigation as per the State counsel and his further custodial interrogation is not required.

9. Keeping in view the aforesaid facts of the present case and for the reasons recorded in the aforesaid detailed order dated 06.11.2023 passed by the co-ordinate Bench of this Court and the fact that the petitioner has joined investigation, his custodial interrogation is not required by the Investigating Agency, the present petition is allowed and the order dated 06.11.2023 granting interim bail to the petitioner is made absolute, subject to the conditions laid down in Section 438(2) Cr.P.C.

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

11. Liberty is reserved in favour of the State/complainant to move for cancellation/recall of the order in case the petitioner violates any condition stipulated under Section 438 (2) Cr.P.C., or upon showing any other sufficient cause.

12. Pending miscellaneous ap plication (s), if any, shall also stand disposed of.

January 29, 2024
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(HARPREET KAUR JEEWAN)
JUDGE

Whether Speaking	Yes
Whether reportable	No