

IN THE HIGH COURT OF PUNJAB & HARYANA  
AT CHANDIGARH

CRM-M-52616-2023  
Date of decision: 14<sup>th</sup> February, 2024

Davinder Singh

...Petitioner(s)

Versus

State of Haryana

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Nirmal Singh, Advocate for the petitioner.  
Mr. Neeraj Poswal, A.A.G., Haryana.

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MANISHA BATRA, J (ORAL):-

The present petition has been filed under Section 439 of Cr.P.C.  
seeking regular bail in FIR mentioned below:-

| FIR No. | Dated      | Police Station                    | Sections                                                          |
|---------|------------|-----------------------------------|-------------------------------------------------------------------|
| 32      | 25.05.2023 | Women,<br>District<br>Kurukshetra | 323, 328, 376(2)(n), 384 and<br>506 of Indian Penal Code,<br>1860 |

2. Brief facts of the case relevant for the purpose of disposal of this petition are that the aforementioned FIR was registered on the basis of written complaint filed by the complainant-prosecutrix ‘S’ (name withheld) on 25.05.2023 alleging therein that on 16.03.2022, she had come into contact with the petitioner through Jeevansathi.com App, in which she had prepared her profile for the purpose of matrimonial alliances. Normal conversations had taken place between the petitioner and herself. On

29.03.2022, at about 6:00 PM, the petitioner met the prosecutrix in a cafe at Kurukshetra. The prosecutrix found his behaviour to be quite good and respectable and believed that he could be perfect life partner for her. The prosecutrix then asked the petitioner to arrange a meeting between their parents and at that time, the petitioner assured that firstly they should be sure that they liked each other and only then they would involve their parents. She alleged that on 01.04.2022, the petitioner had visited Kurukshetra again and met her in a cafe, thereafter, he made her consume some cold drink after taking her to a hotel and on consuming the same, she felt dizziness and unconsciousness and on regaining consciousness, she found that the petitioner had committed rape upon her and had also took her objectionable photographs and prepared videos. When the prosecutrix/complainant resisted and told that she would complain about this fact, then he physically assaulted her and extended threat to make her photos and videos viral. Thereafter, he started blackmailing her and repeatedly committed rape upon her by taking her to different places. He also started making demand of money. She also suspected that the petitioner had married elsewhere. Therefore, she prayed for taking action against him.

3. As per the record, on the basis of her statement, initially a case under Sections 323, 328, 376(2)(n), 384 and 506 of IPC was registered. Investigation proceedings were initiated. The prosecutrix was medically examined. The petitioner was arrested on 26.05.2023. After completion of necessary investigation proceedings and usual formalities, challan was presented in the Court against him and presently, he is facing trial for

commission of aforementioned offences. He had moved an application for grant of regular bail before the trial Court which was dismissed vide order dated 04.10.2023.

4. The present petition has been filed by the petitioner on the grounds and it has been argued by his counsel that he has been falsely implicated in this case. There is delay of thirteen months in lodging of the FIR. The victim is a forty-one years old lady. Infact, it was a case of consensual relationship as the prosecutrix had voluntarily visited hotels with him and then started blackmailing him. No photos or videos as alleged by the prosecutrix have been recovered at the instance of the petitioner. Nor any such photo or video had been made viral by him and this fact has been admitted by the prosecutrix even during her cross-examination. The statement of the victim has since been recorded and therefore, there is no question of his intimidating her. The trial is likely to take time. The allegations in the FIR do not make out any case for commission of offence punishable under Section 376(2) (n) of IPC. Hence, it is argued that he deserves to be given concession of regular bail. It is also argued that victim has executed a written compromise in favour of mother of the petitioner on 31.05.2023 and this fact has been admitted by the victim in her sworn testimony also.

5. *Per contra*, it is argued by learned State counsel that there are serious allegations against the petitioner. The trial is being expedited and there is nothing to show that there would be any undue delay in conclusion of the same. The allegations against the petitioner are quite serious in nature.

Therefore, it is argued that the petition does not deserve to be allowed.

6. I have heard learned counsel for the petitioner as well as learned State counsel at considerable length and have gone through the record carefully.

7. As per the allegations in the FIR, the prosecutrix had who is forty-one years old lady had come into contact with the petitioner through a matrimonial alliance App called as Jeevansathi.com in the month of March, 2022 and they had met for the first time on 29.03.2022. As per the further allegations, on 01.04.2022, the petitioner had taken her to a hotel and had made her consume some cold drink on consuming which she had started feeling sleepy and then he had committed rape upon her. However, a bare perusal of allegations in the FIR and her sworn deposition *prima facie* shows that there are many inconsistencies in both these versions because as per the allegations in the FIR as on 01.04.2022, the petitioner had taken her to some hotel and then made her consumed some cold drink and it was only thereafter, she started feeling sleepy whereas in her sworn deposition she stated that on 21.04.2022, the accused gave her some cold drink in a car and on drinking which she started feeling dizziness and then he took her at some distance from 3<sup>rd</sup> gate of University, Kurukshetra and on gaining consciousness, she found herself in some hotel. She has stated that the petitioner by showing some obscene pictures of her had been establishing physically relationship with her and had been regularly calling her. It neither appears to be a case where any promise of marriage had been made by the petitioner nor it appears to be a case of subjecting the victim to sexual

intercourse against her consent. Rather from the allegations so made, it appears that it was a consensual physical relationship between the petitioner and prosecutrix having turned sour later on. The victim has reported the matter of her being ravished on 01.04.2022 only after a gap of thirteen months without giving any reasonable explanation for the same. She is also shown to have admitted that she had appended her signatures on the register of the hotel when the petitioner had taken her meaning thereby that she was in her full senses at that time. Admittedly, no photographs or videos of the prosecutrix have been made viral by the petitioner till date and there is nothing on record to show that he had captured such photographs and videos and had been blackmailed the victim on that account. The petitioner is in custody since 26.05.2023. The statement of the most material witness has since been recorded. There are no chances of intimidating the witnesses. It is submitted that in her cross-examination the victim has even admitted that she had entered into a compromise Exhibit DX/PW2 with the mother of the petitioner and on 31.05.2023 and the said compromise was bearing her signatures, though copy of such compromise has not been made part of the record of this petition. However, the same reflects the act and conduct of the prosecutrix as she is also shown to have stated before the learned trial Court that she wanted to stay with the petitioner and that is why the above said compromise was signed by her. Keeping in view the entire facts and circumstances which *prima facie* point out that it was a case of consensual physical relationship and it is debatable that the petitioner had subjected the prosecutrix to rape repeatedly against her wish, I am of the opinion that he

deserves to be given concession of bail. Hence, the petition is allowed, the petitioner is ordered to be released on bail subject to his furnishing personal/surety bonds to the satisfaction of the Chief Judicial Magistrate/ Duty Magistrate concerned.

8. It is clarified that observations made hereinabove shall not be construed as an expression of opinion on the merits of the case.
9. Since the main petitin has been allowed, pending application if any is rendered infructuous.

[MANISHA BATRA]

JUDGE

14<sup>th</sup> February, 2024

|                |                               |   |          |
|----------------|-------------------------------|---|----------|
| Parveen Sharma | 1. Whether speaking/ reasoned | : | Yes / No |
|                | 2. Whether reportable         | : | Yes / No |