

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-55910-2023

Date of decision: 26th February, 2024

Gursewak @ Gursewak Singh

...Petitioner(s)

Versus

State of Punjab

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Bhupinder Ghai, Advocate for the petitioner.
Mr. Satjot Singh, AAG, Punjab.

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
287	19.11.2020	A division, District Amritsar	363, 376-D, 506 and 201 of Indian Penal Code, 1860 (for short 'IPC')

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 statement recorded by the prosecutrix (name withheld) on 19.11.2020, alleging therein that previously she was working in some factory at Ludhiana but had to leave her job due to her health condition. On 17.11.2020, she had gone to Amritsar for the purpose of finding some job. Thereafter, she had visited Gurdwara Shahidan Sahib to pay obeisance and

spent night there. On the next day at about 9:00 AM, while she was going to the bus stand and was barefoot, one person who introduced himself as Juvraj Singh met her and asked her the reason for her walking barefoot. The complainant disclosed to him that she lost her chappal/shoes in the Gurdwara Sahib. Then on pretext of taking her to some shop to buy footwear for her, he took her on his motorcycle after calling his friend. Both of them, on the pretext of leaving her at bus stand took her towards Attari Boarder. On the way, they had committed rape upon her turn by turn. She alleged that the petitioner and co-accused had also extended threats to her. They had also called their friends Chotu, Keepu, Taar and Bhinda, who had also committed rape upon her and during night time, she was dropped at Chhreta Chowk and had reached Amritsar. On the basis of her statement and after registration of FIR, investigation proceedings were initiated. The victim was medically examined. Her statement under Section 164 of Cr.P.C. was also recorded, wherein she reiterated the allegations as levelled against the petitioner and the other accused. As disclosed by her, the petitioner-Gursewak Singh had given his mobile phone number to her, therefore, call details records of the said phone were obtained from service provider company. The accused Jugraj Singh @ Juvraj Singh was arrested on 20.11.2020, the present petitioner Gursewak Singh was arrested as on 09.12.2020 and the other accused have also been arrested. During the intervening period, all of them suffered disclosure statements admitting their involvement in the crime of committing rape upon the prosecutrix. Their blood samples were taken for

DNA profiling. The motorcycle used for going to the place of occurrence was recovered from the accused Kuldeep Singh. After completion of necessary investigation and usual formalities, challan was presented in the Court for trial. Presently, the petitioner alongwith the co-accused is facing trial for commission of offences punishable under Sections 376-D, 506 of IPC. He had moved an application for grant of bail before the learned trial Court which has been dismissed vide order dated 10.05.2021.

3. 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. He is in custody since 09.12.2020. He was only nineteen years old at the time of his arrest. The petitioner was totally unknown to the prosecutrix and her version that she had accompanied them appears to be highly doubtful and untrustworthy. There was delay of more than twenty hours in lodging of the FIR by the prosecutrix. She had dragged him into this case. Investigation has since been completed. Material witnesses have been examined. Trial is likely to take time. No useful purpose would be served by keeping him in custody anymore. As per the DNA report, no conclusion could be rendered regarding conclusion or exclusion of the petitioner as a possible contributor to the human semen/DNA present on the clothing of the victim. Therefore, it is argued that it is a fit case for extending benefit of bail to the petitioner.

4. *Per contra*, learned State counsel has resisted the petition, in terms of the status report filed by him. It has been argued by learned State counsel that there are serious and specific allegations against the petitioner.

The victim had disclosed his name as well as the name of the co-accused at the time of lodging of FIR and had made categorical and consistent allegations against them. She had also identified him as the person who had ravished her. Even in her statement recorded under Section 164 of Cr.P.C. as well as the statement recorded before the Court, she has reiterated the allegations as levelled in the complaint. The DNA report does not exonerate him from the allegations of having committed rape upon the victim. The trial is going on at a fast pace. There is nothing on record to show that there would be any undue delay in conclusion of the same. With these broad arguments, it is submitted that the petition does not deserve to be allowed.

5. The petitioner alongwith co-accused Juvraj Singh is alleged to have committed rape upon the prosecutrix as on 18.11.2020. As per the further allegations, the petitioner had then called the other co-accused who were four in number and who also committed rape upon her and then she was left on intervening night of 18/19.11.2020 at Chhetra Chowk. Of course, this was the reason of delay in reporting of the matter by the prosecutrix to police who is a young person. The allegations against the petitioner are serious in nature. The prosecutrix in her sworn statement recorded in the Court has supported the prosecution version. As per the FSL report, the mixed DNA profiling was obtained from the pyjama/lower of the prosecutrix and the alleles present in the said DNA are obtained from the alleles of the petitioner and co-accused and the same were also accounted in the mixed DNR SDR profile. As per this report, the inference as to inclusion or exclusion of the DNA profile of the petitioner as a possible contributor to the

human semen/male DNA present on the lower of the victim could not be drawn. It is also clarified in clause D of the concluding para the same could be due to insufficient quantity of amplifiable male DNA. Meaning thereby, that the possibility that the human semen detected on the lower of the prosecutrix was of the petitioner also apart from that of the co-accused, could not be ruled out. There is nothing on record to show that there would be any undue delay in conclusion of the trial. Keeping in view the nature of the subject offences, the quantum of sentence which the conviction may entail and the attendant facts and circumstances, I am of the considered opinion that the petition does not deserve to be allowed. Hence, the petition is dismissed.

6. It is clarified that observations made hereinabove shall not be construed as an expression of opinion on the merits of the case.

7. Since the main petition has been dismissed, pending application if any is rendered infructuous.

[MANISHA BATRA]
JUDGE

26th February, 2024
Parveen Sharma

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