

Neutral Citation No. 2024:PHHC:072325

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**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

287

CRM-M-57245-2023 (O&M)

Date of decision: 22.05.2024

Dharmdender

...Petitioner

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Ravinder Malik, Advocate
for the petitioner.

Mr. Neeraj Poswal, AAG, Haryana.

MANISHA BATRA, J. (Oral)

1. This petition has been filed by the petitioner under Section 439 Cr.P.C. seeking regular bail in case bearing FIR No. 297 dated 02.05.2023, registered under Sections 323, 376, 451, 452, 506 of IPC and Section 25 of Arms Act at Police Station Hansi City, District Hisar, wherein Section 25 of Arms Act and Sections 451, 452 of IPC have been deleted and Sections 120-B, 354-A, 354-C and 376(2)(n) of IPC have been added later on.

2. Brief facts of the case relevant for the purpose of disposal of this petition are that the aforementioned FIR on the basis of the statement recorded by the complainant 'R' (*name withheld*) on 26.04.2023 on the allegations that she was married with the petitioner about 13 years back and had two children. She levelled allegations that male members of her in-laws family had subjected her to rape during the period from August, 2021 to December, 2022.

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She alleged that in August, 2021, her brother-in-law (husband of *Nanad*) Naresh had ravished her on the point of pistol in the night time, while he was under the influence of liquor. Manoj, who was also her brother-in-law, had ravished her in February, 2022, while extending threat to kill her, accused Sachin son of his Jeth Manoj had visited her house in June, 2022, while she was alone and by proclaiming that her husband had told him to commit wrong act with her and to prepare a video of the same and then Sahil had committed rape upon her in December, 2022 and had prepared a video of the act. Even accused Arun, who was son of Manoj, had tried to commit wrong act with her but on her resistance, he had left. She has alleged that her husband used to extend beatings to her and he made her leave her matrimonial house on 13.04.2023. She prayed for taking action against the aforementioned Naresh, Manoj, Sachin, Sahil and Arun.

3. On the basis of the above, initially an FIR bearing No. 10 was registered under Sections 376, 451, 452, 323 and 506 of IPC and Section 25 of Arms Act at Women Police Station, District Sirsa on 26.04.2023. The said FIR was treated as Zero FIR and was sent to Police Station City Hansi, where the present FIR was registered on 02.05.2023. Investigation proceedings were initiated. The statement of the prosecutrix was recorded under Section 164 Cr.P.C., wherein she stated that her husband did not like her since the very inception of their matrimonial life and always insisted for taking a divorce from him and as she did not do so, therefore, he had hatched conspiracy against her and had intimidated and forced her to do wrong acts. He had made co-accused Naresh, Manoj, Sachin and Sahil, who are his relatives, to commit rape upon her. All of them used to record videos and extend threats to her that

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they would make her videos viral, if she disclosed about the incident to anyone. She also stated that the petitioner, who was having a pistol with him, also used to extend threats to kill her, if she narrated about the detail of the incidents to anybody. She also recorded that her husband even insisted her to give a fake divorce to her by saying that he would make her go to some foreign country. During investigation, the present petitioner and co-accused were arrested. After completion of necessary investigation and usual formalities, *challan* was presented in the Court and presently, the petitioner along with co-accused is facing trial. He had moved an application for grant of regular bail before the trial Court but the same had been dismissed, vide order dated 22.08.2023.

4. It is submitted in the petition and it has been argued by learned counsel for the petitioner that he has been falsely implicated in this case. In fact, it was the complainant, who used to use filthy language against the petitioner and all his family members. The only allegation against him as levelled in the FIR was that he had left her at her matrimonial house. In her statement recorded under Section 164 of Cr.P.C., she materially improved her version by alleging that it was the petitioner, who used to compel her to do illegal acts, whereas it was not so mentioned in the FIR. In the FIR, she did not make any allegations of preparing any video by the co-accused Naresh, whereas she added this allegation in her statement recorded under Section 164 of Cr.P.C. The allegation that the petitioner used to extend threats about the commission of alleged rape upon her by his family members/relatives was also missing in the FIR. In fact, it was the complainant, who wanted divorce from the petitioner on account of their uncordial relations and had demanded a

sum of Rs. 30 Lakhs. The FIR was a counterblast to the divorce petition filed by him against her. The allegations in the FIR were false on the face of record as she kept on residing in her matrimonial house, even after the alleged commission of offence of rape committed by the co-accused and this clearly reflected that she was fully aware and conscious of the fact that no such incident, as alleged by her, had ever taken place. The petitioner is in custody since 04.08.2023. Investigation has since been completed. Trial is likely to take time. No useful purpose would be served by keeping him in custody anymore. There is no apprehension of his absconding as he has a permanent abode. He will not tamper with the evidence. In fact, he is the victim at the hands of the prosecutrix. With these broad submissions, it is urged that the present petition deserves to be allowed.

5. Status report has been filed by respondent-State, wherein the pleas as taken by the petitioner have been controverted. It is also stated in the status report that during the course of investigation, the petitioner was arrested and he suffered a disclosure statement to the effect that in the year 2021, on the day of *Rakshabandhan*, co-accused Naresh had done something wrong with the complainant and when she disclosed this fact to him, he did not do anything but since he did not like the complainant since the beginning of his marriage and wanted to divorce her, therefore, with the intention to defame her, he had installed a hidden camera in his room and had also told about the behavior of the complainant to the co-accused, who by taking advantage of the situation, had started making physical relations with the complainant by blackmailing her. He also disclosed that the prosecutrix was not aware of the hidden camera, in which, the videos of her having relations with aforesaid

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accused had been captured and thereafter by showing the said video to her, he had started coercing her to give divorce to him but as she still did not agree, he had left her at her house. He also got recovered the said camera and chip installed therein. Learned State counsel has argued that in fact, the present petitioner was the kingpin of the crime and played a big role in facilitating commission of sexual offences against her own wife by his family members and relatives. The allegations against him are serious in nature. The report from FSL as to the genuineness of the videos recovered from the hidden camera as well as from the mobile phones of the co-accused is yet to be received. Charge has since been framed. There is nothing on record to show that there would be any undue delay in conclusion of trial. Therefore, he has argued that the present petition is liable to be dismissed.

5. I have heard learned counsel for the parties and have also gone through the material placed on record very carefully.

6. The petitioner is alleged to have hatched a conspiracy with the male members of his family to get rid of his wife and in pursuance of that conspiracy, he is alleged to have facilitated the commission of acts of subjecting his wife to sexual intercourse by them. In the order dated 22.08.2023, passed by the Court of learned Additional Sessions Judge, Hisar, whereby the bail application of the petitioner was dismissed, a plea is shown to have been taken by the petitioner that he had installed a CCTV camera in his bedroom as his money was being stolen. This plea cannot be accepted as no normal person would install a CCTV camera in his own bedroom, unless he has some other intentions with ulterior motives, therefore, apparently the CCTV camera appears to have been installed by him to create evidence of the

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sexual acts committed by the male members of his own family with this wife. No doubt being husband of the complainant, he cannot be considered to have committed rape upon her, however, his active role in facilitating the commission of such offence against the complainant is *prima facie* made out from the material placed on record. The case of co-accused Arun, who is nephew of the petitioner and had been extended benefit of regular bail by this Court, cannot be stated to be at par with the case of the petitioner. The testimony of the complainant is yet to be recorded. The apprehension expressed by learned State counsel that the petitioner may intimidate the complainant or abscond cannot be stated to be unfounded at this stage. Keeping in view the nature of allegations as levelled against the petitioner, the quantum of sentence which the conviction may entail and the attendant facts and circumstances of the case, I am of the considered opinion that this petition does not deserve to be allowed. Hence, the same is dismissed.

7. It is made clear that any observation made herein above is only for the purpose of deciding the present petition and the same shall have no bearing on the merits of the case.

22.05.2024
Waseem Ansari

(MANISHA BATRA)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>