

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

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CRM-M-59021-2023 (O&M)
Date of decision: 16.04.2024

Arun ...Petitioner

Versus

State of Haryana ...Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Sushil Kumar Verma, 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 376, 376(2)(n), 450, 354-C, 354-A, 323, 120-B and 506 of IPC at Police Station City Hansi, District Hisar, which was initially registered as zero FIR bearing No. 10 dated 26.04.2023, under Section 25 of Arms Act and Sections 323, 376, 451, 452, 506 of IPC at Women Police Station, Sirsa.
2. Brief facts of the case relevant for the purpose of disposal of this petition are that the aforementioned FIR was registered on 26.04.2023, the prosecutrix 'R' (*name withheld*) reached at Police Station Women, District

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Sirsa and got recorded her statement that she was married with accused Dharmender about 13 years ago and was residing in her matrimonial at Hansi earlier. Two children were born out of the wedlock. She alleged that in August, 2021, she was sleeping alone in her room when at about 11:00/11:30 PM, accused Naresh, who is her brother-in-law and who had come to take her sister-in-law (*Nanand*) back, entered into her room. He was under the influence of liquor and he forcibly committed rape upon her by showing a pistol and by extending threat to kill her. She further alleged that in February, 2022, accused Manoj [who is also her brother-in-law (*Jeth*)] also committed rape upon her while extending threat to kill her. She had told about this fact to her in-laws family but they did not trust her. She also disclosed that accused Sachin, who was son of her *Jeth* Manoj, had ravished her in June, 2022 by telling her that he had been asked by the husband of the prosecutrix to do wrong act with her and to take a video of the same. She also disclosed that she was even ravished by her father-in-law in the month of December, 2022. It was also alleged by her that her husband used to mistreat her and wanted to take divorce from her. It was further alleged by her that in the year 2023, the present petitioner, who is son of accused Manoj, had come to her at about 11:00 AM and he also had asked the prosecutrix to have sexual intercourse but on objection being raised by her, he had left the place. On the basis of this complaint, initially an FIR bearing No. 10 was registered 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. The

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present petitioner and co-accused were arrested and 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 03.11.2023.

3. 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. The FIR has been lodged with totally false and baseless allegations. There is unexplained delay in lodging of the same. The prosecutrix had implicated all the male members of her in-laws family. In fact, she had been caught red handed while she herself was involved in adulterous relationship with some third person. Her husband had filed a divorce petition against her and this FIR was a counter-blast to the same. There is allegation against the petitioner of committing rape upon the prosecutrix. He has also argued that there are contradictions in the statements of the prosecutrix as recorded under Section 164 Cr.P.C. and the FIR, which falsify her version. The trial is likely to take time. There are no chances of his intimidating the witnesses. He has not been charged under Section 376(2)(n) of IPC. He is a young boy of 20 years of age only and his entire career has been ruined due to his false implication. With these broad submissions, it is urged that the present petition deserves to be allowed.

4. *Per contra*, learned State counsel has argued that there are serious and specific allegations against the petitioner. The charges have been framed against the petitioner and co-accused and there is nothing on record to

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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 allegations against the petitioner are that somewhere in the year 2023, he had gone to the prosecutrix, who is her aunt, and had asked her to oblige him by doing sexual intercourse with him and on her resistance, he had left her. In her statement recorded under Section 164 Cr.P.C., the prosecutrix did not utter even a single word as against the present petitioner. The petitioner has not been chargesheeted by the trial Court for commission of offence punishable under Section 376(2)(n) of IPC. Though, he has been chargesheeted under Section 120-B of IPC along with other offences, but in view of the allegations levelled in the FIR, it is a debatable question as to whether he along with other accused had hatched any conspiracy to sexually exploit or harass the prosecutrix or to get her ravished by the co-accused. The petitioner is nephew of the prosecutrix. It has come on record that the husband of the prosecutrix has filed a case seeking divorce from her. The petitioner is in custody since 04.05.2023. The conclusion of trial is likely to take time. Keeping in view the nature of the allegations which have been levelled against the petitioner in the FIR, the fact that he has not been named by the prosecutrix in her statement recorded under Section 164 Cr.P.C., the period of his incarceration and the attendant facts and circumstances of the case, I am of the considered opinion that no useful purpose would be served by keeping him in custody anymore.

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7. Accordingly, the present petition is allowed and the petitioner is ordered to be released on regular bail, subject to his furnishing personal/surety bonds to the satisfaction of the trial Court/Duty Magistrate concerned.
8. 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.

16.04.2024

Waseem Ansari

(MANISHA BATRA)

JUDGE

Whether speaking/reasoned

Yes

Whether reportable

Yes