IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CRM-M-60167-2023

Date of Decision: 20.02.2024

Ashish Kumar

…. Petitioner

Versus

State of Haryana

.... Respondent

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present: - Mr. R.A. Sheoran, Advocate for the petitioner.

Mr. Surinder Kumar Dagar, DAG, Haryana.

NIDHI GUPTA, J. (ORAL)

The petitioner has filed the present 2nd petition under Section 439 of the Code of Criminal Procedure, 1973, for grant of regular bail in case FIR No. 44 dated 19.04.2023 registered under Sections 120-B, 354-D, 376(2)(n) and 506 IPC (Sections 201 and 366 IPC added later on) at Women Police Station Bhiwani, District Bhiwani.

The aforesaid FIR was registered on the basis of written application moved by the prosecutrix herself, which is reproduced as under:-

> *"To SHO Women Police Station Bhiwani, Sir, I am (prosecutrix) D/o Anil Kumar, Caste (Aggarwal) resident of village Jui Bichali. I request you that Ashish Vashishth R/o Devrala who now residing near bus-stand in Bhiwani doing work of Bhajan Kirtan and Bhagwat. He came to our village two years ago to perform Bhagwat and I became Radha in that function. Since then he started calling me and sending me SMS. Initially, he used to talk on the phone pretending to be Guruji and later-on he started following me and around 12th February this year, he had come to Jui to do Bhagwat*

RISHU KATARIA
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order/judgment.

> *and after that when I was going home from Adarsh College in Bhiwani, he along with one boy namely Soni came in an old Alto Car near the bus stand. The boy who took out a gun made me sit in the car and took me in coffee shop in front of HUDA Park and forcibly did wrong act with me. He clicked my photo and video and after that did the act several times and said that if I told this to anyone, he would kill my parents and brother and would made the phone and video viral. On 11.4.2023, I went to Vapi (Gujara) with my father. He called and threatened my uncle namely Shiv Sankar who lives in Siwani and said get me married to Shilpa otherwise I will kill her entire family. The said threat given by him is also recorded in the phone. Bhavan Panu who lives in Kirti Nagar (Bhiwani) and the other Soni who lives in Hanuman Dhani are always along with him. Ashish Vashisht whose number (9812592947) and gave calls and threatens from this number. He is from village Devrala and now lives in Bhiwani whose correct house number I do not know. I met him when he came to our village to perform bhajan kirtan, hence I request you take strict legal action against him ....”*

Learned counsel for the petitioner, *inter alia,* submits that prosecutrix was about 23 years old at the time of alleged incident. It was a consensual relationship between the petitioner and the prosecutrix. It is submitted that vide order dated 08.11.2023 (Annexure P-10) the application for grant of regular bail to the petitioner before the learned trial Court was dismissed as withdrawn only on the ground that the prosecturix and her mother were yet to be examined. However, now on 16.02.2024 statement of the prosecutrix as PW-12 has been recorded, wherein she has turned hostile and has given a version of events different from those detailed in the FIR. The first petition for grant of regular bail bearing CRM-M-32050-2023, was dismissed as withdrawn vide order dated 28.07.2023 (Annexure P-3). The petitioner has been in custody since 21.04.2023. The trial is likely to take long time. No useful purpose will be served by further detention of the petitioner in custody. Thus, it is prayed that petitioner may be released on regular bail.

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Learned counsel for the State has filed custody certificate dated 19.02.2024, which is taken on record, as per which the petitioner has been in custody as an undertrial for a period of 09 months and 28 days. As per custody certificate, there is no other case against the petitioner. However, learned counsel for the State has no instructions as to whether the prosecutrix has been examined before the trial Court or not.

Having heard learned counsel for the parties, but without commenting on merits of the case, however, keeping in view the totality of the facts and circumstances of the case including the custody period undergone by the petitioner; and that the custody certificate shows that there is no other case against the petitioner; and also the fact that conclusion of trial will take considerable time, therefore, no useful purpose would be served by further detention of the petitioner. Thus, the present petition is **allowed.**

The petitioner-Ashish Kumar S/o Anil Kumar is ordered to be released on regular bail on his furnishing bail/surety bonds to the satisfaction of the trial Court/Chief Judicial Magistrate/Duty Magistrate, concerned.

However, it is made clear that nothing stated above shall be construed as an expression of opinion on the merits of the case.

20.02.2024 **(NIDHI GUPTA)**
rishu **JUDGE**

Whether speaking/reasoned Yes/No

Whether Reportable Yes/No

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