

2024:PHHC:009340

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

212

CRM-M-61973-2023
Date of decision: 24.01.2024

Sunil Kumar @ Shalu

...Petitioner

V/s

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Abhinav Gupta, Advocate,
for the petitioner.

Mr.Priyanka Sadar, AAG, Haryana.

SUMEET GOEL, J. (ORAL)

1. Present petition has been filed under Section 439 Cr.P.C. for grant of regular bail to the petitioner in case bearing FIR No.72 dated 14.03.2023, registered for the offences punishable under Sections 328, 376, 354, 506, 34 at Police Station City Rewari, District Rewari.
2. The case set up in the FIR in question is as follows:-

“To, SHO Sir, Ploce Station Rewari City, Subject: Compliant regarding taking legal action against Sunil (whom I can identify) owner of Samrat Hotel near railway road, Rewari. Sir, the complainant prays as follows: That my daughter is studying in Rao Khemchandra Vidya Bihar School, Bahotwas Ahir, District Rewari and she is staying in a Hostel there. On yesterday dated 13.03.2023, I went to visit my daughter and because I was getting late, I decided to spend a night at Samrat Hotel, room no.112 which is situated at Rewari Railway Road and thereafter, I ordered food in the evening and a person came to deliver the food and he introduced himself as Sunil and also he said that he is the owner of Hotel. As soon as I ate the food, I started feeling

unwell and intoxicated, at that very moment, the above mentioned person name Sunil came to my room again and took advantage of my condition and raped me against my wish and he left the room. Thereafter, another person came to my room having a blanket and he too started sexually harassing me forcibly, somehow I was able to take him out of my room. Abovementioned second person introduced himself as Ravinder. The Following morning when I heard the noise of people, I came out of my hotel room and ran away from there, whilst I was running, the above mentioned accused persons threatened me that in case the incident is disclosed to any body then they would kill me. Sir, it is humbly requested that legal action may be taken against above mentioned accused persons. I shall be thankful to you. Sd/- Rajeshwari wife of Kapil Kumar, resident of D-76, Ganesh Puri, Sahibabad, District Ghaziabad Mobile No.8079011710.”

3. Learned counsel for the petitioner has argued that the petitioner is in custody since 14.03.2023, investigation was carried out & challan was presented thereafter. It is further submitted that the earlier bail petition filed before this Court was withdrawn on 14.11.2023 since at that time the prosecutrix had not been examined & the prosecutrix has now been examined on 17.11.2023. Learned counsel for the petitioner has further argued that the divergent stand taken by the prosecutrix in the FIR, statement recorded under Section 164 Cr.P.C. as also the statement made by her at the time of her being medically examined clearly shows that the case is of false implication. Learned counsel for the petitioner has further relied upon the prosecutrix being in custody in FIR No.201 dated 18.04.2023 registered under Sections 384, 385, 388, 34 & 120 B IPC at Police Station City Bahadurgarh, District Jhajjar, to argue that the case in

hand is one of false implication. Accordingly, learned counsel for the petitioner has prayed for grant of regular bail.

4. Learned counsel for the State has opposed the present petition by arguing that the allegations raised are serious in nature and, thus, the petitioner does not deserve the concession of regular bail.

5. I have heard counsel for the parties and have gone through the available records of the case.

6. The accused was arrested on 14.03.2023 & as per the custody certificate dated 23.01.2024, he is stated to have suffered incarceration for more than 10 months. Further, the custody certificate does not reflect involvement of the petitioner in any other case. The material private witness(s) already stand examined. The rival contentions of the learned counsel for the parties regarding the divergence in the stand of the prosecutrix at the time of recording of the FIR, statement under Section 164 Cr.P.C. as also the statement made by her at the time of medical examination will be gone into during the course of trial. The aspect of the prosecutrix being in custody in FIR No.201 dated 18.04.2023 registered under Sections 384, 385, 388, 34 & 120 B IPC at Police Station City Bahadurgarh, District Jhajjar, shall also be gone into by the learned trial Court at appropriate stage. This Court does not deem it appropriate to delve deep into the allegations lest it may prejudice the rights of either parties. No tangible material has been brought before this Court to indicate likelihood of the petitioner absconding from the process of justice or

interfering with the prosecution evidence. Hence, in considered opinion of this Court, further detention of the petitioner is not warranted.

7. In view of totality of factual matrix of the present case, the instant petition is allowed. Petitioner is ordered to be released on regular bail on his furnishing bail/surety bonds to the satisfaction of the Ld.concerned CJM/Duty Magistrate. However, in addition to conditions that may be imposed by the concerned CJM/Duty Magistrate, the petitioner shall remain bound by the following conditions:-

- (i) The petitioner shall not mis-use the liberty granted.
- (ii) The petitioner shall not tamper with any evidence, oral or documentary, during the trial.
- (iii) The petitioner shall not absent himself on any date before the trial.
- (iv) The petitioner shall not commit any offence while on bail.
- (v) The petitioner shall deposit his passport, if any, with the trial Court.
- (vi) The petitioner shall give his cellphone number to the Investigating Officer/SHO of concerned Police Station and shall not change his cell-phone number without prior permission of the trial Court/Illaq Magistrate.
- (vii) The petitioner shall not in any manner try to delay the trial.

8. In case of breach of any of the aforesaid conditions and those which may be imposed by concerned CJM/Duty Magistrate as directed hereinabove or upon showing any other sufficient cause, the State/complainant shall be at liberty to move cancellation of bail of the petitioner.

9. Ordered accordingly.
10. Nothing said hereinabove shall be construed as an expression of opinion on the merits of the case.
11. Since the main case has been decided, pending miscellaneous application, if any, shall also stands disposed off.

(SUMEET GOEL)
JUDGE

January 24, 2024
poonam

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No