

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M No.64114 of 2023
Date of Decision: 19.04.2024

Shanu @ Salim Ahmad ... Petitioner

Versus

State of Haryana ... Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Gaurav Kalsi Advocate,
for the petitioner.

Mr. Neeraj Poswal, AAG, Haryana.

MANISHA BATRA, J.

1. The present petition has been filed under Section 439 of Cr.P.C. seeking regular bail in FIR mentioned below:-

FIR No.	Police Station	Sections
352	Dabua, District Faridabad	376 (2) (n) and 506 of IPC (Section 323 of IPC added later on)

2. The facts relevant for the purpose of disposal of the present petition are that the aforementioned FIR was registered on the basis of a written complaint submitted by the complainant "S" (name withheld) on 28.07.2022, alleging therein that he used to live along with his sister in a rented accommodation. The petitioner who is a married person was living in the adjoining room of his rented accommodation. He had committed

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rape upon his sister "S" (name withheld) about seven months back. Due to shame, his sister did not tell about this fact to him or anybody else. He alleged that on noticing changes in the physique of his sister, they had taken her to a doctor and she was found to be having pregnancy of seven months and on making probe, she had disclosed the entire facts to him. The complainant further alleged that now the accused had been extending threats to kill them if they lodged any complaint. After registration of FIR, investigation proceedings were initiated. Statement of the prosecutrix was recorded under Section 164 of Cr.P.C. She was also medically examined. The petitioner was arrested on 28.09.2022. His medical examination was also conducted and DNA sample was obtained. After completion of necessary investigation and usual formalities, challan was presented against the petitioner and presently, he is facing trial for commission of aforementioned offences.

3. It is argued by learned counsel for the petitioner that he has been falsely implicated in this case. He is in custody for a period of about one year and seven months. The prosecutrix and the complainant who is also brother of the prosecutrix since stand examined. There are no chances of the petitioner's tampering with the prosecution evidence or absconding if extended benefit of bail. The trial is likely to take time. No useful purpose would be served by his further detention.

4. It is further argued by learned counsel for the petitioner that infact it is a case where the family of the prosecutrix had agreed to solemnize her marriage with the petitioner since the petitioner is not having any child from his existing marriage. He had agreed to give a sum of Rs.12 lacs in lieu of purpose of such marriage and as he could not make payment

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of the remaining amount within a period of 4-5 days of demanding the same by the complainant, therefore, he has been falsely implicated in this case. There is delay of seven months in lodging of the FIR which has not been satisfactorily explained. The prosecutrix is major. The relationship between them could be stated to be consensual also and hence, no case of rape has been made out against him. Hence, it is argued that the petition deserves to be allowed.

5. Status report has been filed by the respondent-State as per which, after lodging of the FIR, the prosecutrix gave birth to a male child and the DNA of the said child has matched with the DNA of the petitioner thereby proving that it is he who is biological father of the said child. It is argued by learned State counsel that there are serious and specific allegations against the petitioner. The trial is going at a fast pace. There is nothing to show that there would be any undue delay in conclusion of the same. The prosecutrix and complainant have fully supported the prosecution version. In their statements recorded before the Court, the version as put up by the petitioner in his defence is improbable and unnatural. Hence, it is argued that no case for extending benefit of bail to the petitioner has been made out.

6. I have heard learned counsel for the petitioner and learned State counsel at considerable length and have gone through the record.

7. Copy of the report issued by FSL, Madhuban has been placed on record by respondent-State as Annexure R-2 which shows that the DNA profile of the baby of the prosecutrix is matching with the DNA profile of the blood sample of the present petitioner and of the prosecutrix thereby conclusively proving that the petitioner is biological father and the victim is

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biological mother of the child delivered by her as on 29.09.2022. As per the allegations, the petitioner who had been living in the neighbourhood of the victim and is a married person had repeatedly ravished her thereby impregnating her and she delivered a male child on 29.09.2022 whereas according to the petitioner, it was a case of consensual relationship and as he is not having a child from his first marriage and he being a Muslim and his custom allowing him to perform two marriages, it was agreed by the complainant to solemnize the marriage of the prosecutrix with him, in lieu of receipt of money and as he could not pay the entire money within the stipulated time, hence, he has been falsely implicated.

8. The allegations and counter allegations so levelled by the parties are to be proved on thorough assessment and evaluation of the evidence by the trial Court and not at this stage. On plea of grant of bail, the Court is not supposed to go into the merits of the case. The fact that the prosecutrix has been subjected to repeated acts of sexual intercourse by the petitioner which has resulted into her becoming pregnant and giving birth to a child stands established from record. At this stage, nothing has been produced on record by the petitioner to show that the relationship between the prosecutrix and himself was consensual in nature. She might have been major and there might be delay in lodging of the FIR but from these facts, no definite conclusion can be drawn with regard to the fact that it was not a case of rape but of consensual relationship. Keeping in view the gravity of the offences alleged to be committed by the petitioner, 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 at this stage. Hence, the same is dismissed.

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

19.04.2024
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(MANISHA BATRA)
JUDGE

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