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2024 : PHHC : 009137

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-61985-2023

DATE OF DECISION : 23.01.2024

MUSTAKEEM

... PETITIONER

V/S

STATE OF HARYANA AND ANOTHER

... RESPONDENTS

CORAM: HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN

Present: Mr. Sarfraj Hussain, Advocate for the petitioner.

Mr. Amrik Singh Narwal, DAG Haryana.

Mr. Akash Sheoran, Advocate for respondent No.2.

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HARPREET KAUR JEEWAN, J. (ORAL)

(1) Petitioner is seeking relief of anticipatory bail in the present petition filed under Section 438 Cr.P.C. in the case bearing FIR No. 305 dated 22.09.2023 under Sections 365, 376-D, 506 IPC registered at Police Station Punhana, District Nuh, Haryana.

(2) Learned counsel for the petitioner contends that respondent No.2 was earlier married to one Ajim in the year 2017 but the said Ajim used to beat her mercilessly and as such, she left his company and joined the company of the petitioner without any pressure. Petitioner and respondent No.2 filed a protection petition in the High Court bearing CRWP-9467-2023, Annexure P-1. However, later on respondent No.2 was forcefully taken away from the company of the petitioner by the family members and the present false FIR was got registered. The alleged occurrence took place on 13.09.2023. There is a huge delay of 9 days in registration of the FIR.

Now, again respondent No.2 has joined the company of the petitioner. The relationship between the petitioner and respondent No.2 is consented. The petitioner is ready to join the investigation.

(3) The State has opposed the bail application. Learned State counsel contends that the present FIR has been registered at the instance of respondent No.2 and there are serious allegations that respondent No.2 was abducted and gang rape was committed by the petitioner and his co-accused Jabid. The statement of the prosecutrix under Section 164 Cr.P.C. has also been recorded by Sub Divisional Judicial Magistrate, Ferozepur Jhirka on 24.09.2023 and the petitioner had supported the prosecution version.

(4) I have considered the contentions raised on behalf of the parties. The case was registered at the instance of the victim herself. The victim has alleged in the FIR that on 15.09.2023, she was sleeping with her family members. At about 2 O'clock, she went to the washroom and when she came back and was present in the courtyard, petitioner-Mustakeem @ Kukki along with two other persons gagged her mouth and forcibly put her in a white Bolero which was standing outside the courtyard. She was taken to an unknown place and petitioner-Mustakeem @ Kukki forcibly committed rape upon her. She has alleged that another occurrence took place on 17.09.2023, when at about 6 O'clock in the morning, Jabid-co-accused of the petitioner took her forcibly near Faridabad in a vehicle and he along with petitioner Mustakeem had forcibly committed rape with her and extended threats that in case she makes any attempt to run away, she would be killed. Thereafter, the petitioner took her in a jungle at Muhru Ka Nangla and somehow she could rescue herself from the clutches of the petitioner and his co-accused. At about 3 O'clock in the night, she reached

her home and narrated the incident to her family members. The prosecutrix has further alleged in the FIR that the petitioner has been pressuring them to make a compromise before the FIR was registered.”

(5) The petitioner has taken a plea that he was having a consensual relationship with the victim and they both have filed a joint petition in the High Court on the ground that they are having live-in-relationship. Perusal of the order dated 10.10.2023 passed by the Co-ordinate Bench in the said CRWP-9467-2023 reveals that the said petition was filed seeking protection of the life and liberty of the petitioners from the hands of private respondents. None was present on behalf of the petitioners on 10.10.2023. The said petition was dismissed and the State authorities were directed to proceed in accordance with law against petitioner No.1 in the said petition. The said order reads as under:-.

“1. The present petition has been filed, inter alia, praying for protection of the life and liberty of the petitioners at the hands of private respondents.

2. Status report by way of an affidavit of Sh. Ashok Kumar, HPS. Deputy Superintendent of Police, Punhana, on behalf of respondent Nos. 1 to 3 has been filed along with the MLR and statement of petitioner No.2 recorded under Section 164 of Cr.P.C. (Annexures R-1 and R-2, respectively). The same is taken on record.

3. As per the statement of petitioner No.2 recorded under Section 164 of Cr.P.C., she has deposed against petitioner No.1 and the anticipatory bail of petitioner No.1 has already been dismissed.

4. At this stage, a lady Advocate had put in appearance on behalf of the petitioners and filed her memo of appearance but the same was returned as it did not have the necessary NOC from the filing counsel. She was requested for obtaining the NOC from the previous counsel but has not come present till 4.00 p.m.

5. In light of the above, the present petition is dismissed and the State authorities shall proceed in accordance with law against petitioner No.1.”

(6) As per the facts on record, there are serious allegations against the petitioner. The FIR has been registered at the instance of the victim wherein she has alleged serious allegations of gang rape by the petitioner and by his co-accused. As per the copy of CRWP-9467-2023, Annexure P-1, the petitioner is already married and is having 4 children and his wife is also residing with him. As such the contentions that complainant is residing with petitioner and they are having consensual relationship becomes doubtful. In such circumstances, custodial interrogation is necessary to unearth the true facts as complainant has also supported her version in the statement recorded by Magistrate under Section 164 Cr.P.C.

(7) Keeping in view the gravity of allegations against the petitioner, no ground is made out for granting of concession of bail under Section 438 Cr.P.C. to the petitioner. Consequently, the present petition stands dismissed.

23.01.2024

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**(HARPREET KAUR JEEWAN)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No