



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CRM-M No.58605 of 2024 (O & M)
Date of decision : 28.11.2024

Rajeev @ RajivPetitioner
Versus
State of HaryanaRespondent

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Balvinder Sangwan, Advocate, for the petitioner

Ms. Mahima Yashpal, DAG, Haryana

SUMEET GOEL, J. (ORAL)

1. Present petition has been filed under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short 'BNSS') for grant of regular bail to the petitioner in case FIR No.15 dated 13.2.2024, under Sections 376 (2)(n) and 506 of the IPC, registered at Women Police Station, Ballabgarh, Faridabad.
2. The case set up in the FIR in question (as set out in the present petition by the petitioner) is as follows:-

'Statement of Jannat W/o late din Mohammad R/o Panvah Jakhoha Mainpuri Kurwali Uttarparadesh, currently tenant at House No. 1 Street No. 1 near Gas warehouse, Village Uncha Adarsh Nagar, Fari age 36 Years, Ph No. 8810440783 stated that "I am residing on above stated address. I do cleaning work in houses, I have four children, I am an illiterate, I met Rajiv S/o Vikram village Dayalpur, 3 years ago. We became friends with each other. That Rajeev told me that my wife has died and I will marry you. He let me stay on rent near Yadav Dairy and who



kept having physical relations with me on the pretext of marriage. About 5 months ago, Rajiv left the room and went away. Then I took another room in Adarsh Nagar and started living with my children. When I asked Rajiv for marriage, he refused and after finding out from somewhere, Rajiv started coming to my house and he started forcibly establishing physical relations with me. When I refused to have relations with him, he told me that just like I shot my mother-in-law, I will shoot you too and if you complain, I will kill you. He came today on 13.2.2024 around 4:00 pm and started forcing himself on me and had physical relations with me. Legal action should be taken against Rajeev." Statement was scribed and heard and is correct. I have given statement is of my own free will and without any fear or pressure. RTI Jannat.'

3. Learned counsel for the petitioner has argued that the petitioner is in custody since 14.2.2024. Learned counsel has further iterated that the petitioner is a man aged 44 years whereas the complainant/victim is a lady aged 36 years and they were in consensual relationship for a period of about three years. The said consensual relationship fell apart later on, and hence the FIR in question was got registered against the petitioner. Learned counsel for the petitioner has further submitted that the offence of Section 376 (2)(n) of IPC is not made out against the petitioner from the factual matrix of the *lis*, in order to buttress his arguments, learned counsel for the petitioner has relied upon the dicta of the judgment of this Court passed in '**Sanjay Kumar Sharma v. State of Haryana and another**', 2024:PHHC:080609, relevant whereof reads as under:

'14. As a sequel to the above said discussion, the following postulates emerge:

I. The Consent of a woman; in context of Section 375 of IPC, 1860; must involve an active and reasoned deliberation towards the proposed act.

II. For a court to hold that the "Consent" of a woman was marred by 'misconception of fact' on account of a promise to marry; it must emerge



from the factual conception of a given case that, firstly such promise was false from inception itself with no intention to upkeep it and secondly, such false promise must be of immediate relevance in terms of time or bear a direct nexus to the woman's decision to engage in physical relation(s).

III. In a case pertaining to rape, based upon promise to marry and/or involving extra marital relationship (wherein the man or woman or both are married to other persons), the Court ought to take into account the entirety of facts/circumstances of such case, including but not limited to, comparative age of accused and victim; educational, social and economic background of the accused and the victim; the nature of professional work/avocation being undertaken by accused and victim in their respective lives etc. It is neither axiomatic nor fathomable to lay any exhaustive set of guidelines in this regard as every case has its own peculiar factual matrix.'

Thus, regular bail is prayed for.

4. Learned State counsel 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 the regular bail. Learned State counsel seeks to place on record custody certificate dated 27.11.2024 in Court, which is taken on record.

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

6. The petitioner was arrested on 14.2.2024 whereinafter investigation was carried out and challan was presented on 27.3.2024. Total 15 prosecution witnesses have been cited and none has been examined till date. The rival contention of learned counsel for the parties; as to whether the offence under Section 376 (2)(n) of IPC is made out against the petitioner or not as also whether there was consensual relationship earlier between the petitioner and the victim which fell apart



later on which led to the registration of the FIR in question; shall be gone into during the course of trial. This Court does not deem it appropriate to delve deep into these rival contentions, at this stage, lest it may prejudice the trial. Nothing tangible has been brought forward to indicate the likelihood of the petitioner absconding from the process of justice or interfering with the prosecution evidence. As per custody certificate dated 27.11.2024 filed by learned State counsel, the petitioner has already suffered incarceration for a period of nine months and fourteen days.

As per the said custody certificate, the petitioner is stated to be involved in another FIR registered under section 307 of IPC and 3 more complaint cases. Indubitably, the antecedents of a person are required to be accounted for while considering a regular bail petition preferred by him. However, this factum cannot be a ground sufficient by itself, to decline the concession of regular bail to the petitioner in the FIR in question when a case is made out for grant of regular bail *qua* the FIR in question by ratiocinating upon the facts/circumstances of the said FIR. Reliance in this regard can be placed upon the judgment of the Hon'ble Suypreme Courty in *Maulana Mohd. Amir Rashadi v. State of U.P. and another, 2012 (1) RCR (Criminal) 586*; a Division Bench judgment of the Hon'ble Calcutta High Court in case of *Sridhar Das v. State, 1998 (2) RCR (Criminal) 477* & judgments of this Court in *CRM-M No.38822-2022* titled as *Akhilesh Singh v. State of Haryana*, decided on 29.11.2021, and *Balraj v. State of Haryana, 1998 (3) RCR (Criminal) 191*.



Suffice to say, further detention of the petitioner as an undertrial is not warranted in the facts and circumstances of the case.

7. In view of above, the present 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 cell-phone 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/Illaqa 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. Pending miscellaneous application(s), if any, stand disposed of accordingly.

(SUMEET GOEL)
JUDGE

28.11.2024
Ashwani

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