

PBGD010003832023



Presented on : 12-01-2023

Registered on : 12-01-2023

Decided on : 16.01.2023

**IN THE COURT OF SH. AJIT PAL SINGH
ADDITIONAL SESSIONS JUDGE, Gurdaspur.**

Unique Identification Code No. (PB0226)

Computer generated No. BA-178-2023

Bail application no. 28 of 12.01.2023

Date of order: 16.01.2023

Daman Kumar son of Narinder Pal resident of village Tibber, P.S. Tibber,
Tehsil and District Gurdaspur

—Accused/applicant

Versus

State of Punjab.

FIR No. 29 dated 19.05.2022

U/ss 376/450/458 IPC

P.S. Tibber

2nd BAIL APPLICATION U/S 439 CR.P.C

Present: Sh. K.K. Malhi, Advocate, counsel for accused/applicant.
Smt. Neelam Addl.P.P for the State.

O R D E R

1. This order of mine shall dispose of bail application moved under Section 439 Cr.P.C on behalf of above said accused/applicant Daman Kumar for releasing him on bail in aforementioned FIR.

2. Notice of bail application was given to State, consequent upon which learned APP for the State had put in appearance. Record has

been perused.

3. In brief, prosecution story is that present case was registered on the statement of prosecutrix to the effect that she was serving as teacher in a private school namely Mount Everest Senior Secondary School, Tibber. On 15.05.2022 at about 10:30 PM, friend of her husband namely Daman Kuamr son of Narinderpal resident of Tibber called her telephonically and asked to open the gate of her house, but she refused. He used to come to her house for giving milk and often harassed her telephonically. He also forced her to talk with him or otherwise he would kill her children and also used to issue threats. Daman Kumar entered into her house from the side of other vacant house by scaling the wall and issued threat to her that she should go to another room or otherwise he would kill her children. Due to scare, she went to the room, where Daman Kumar threw her on the bed and forcibly removed her lower and made forcibly physical relations with her against her wish. The mater was tried to compromise with the intervention of respectables, but to no avail. On the basis of said statement, present FIR was got registered.

4. I have heard the learned counsel for accused-applicant, learned Additional PP for the State and have also perused the record very minutely with their able assistance.

5. Learned counsel for accused-applicant has argued that the accused-applicant is innocent and has been falsely implicated in the present case. The accused-applicant is in judicial custody since

22.05.2022 and nothing is to be recovered from him. It has been further contended that all the material witnesses have been examined and there is unexplained delay of four days in lodging the FIR. The basic ingredients of Section 376/450/458 IPC was missing. It has been further contended that accused-applicant will abide by all the terms and condition as imposed upon him and finally prayer for granting him regular bail has been made.

6. Per contra, in stark retaliation to the arguments put forth by learned counsel for accused-applicant, learned APP for the State vehemently opposed the contentions so put forth by learned counsel for accused/applicant and stated that serious allegations have been levelled against the present accused-applicant and in case, he is granted bail, he might try to hamper the process of investigation and might also try to influence the prosecution witnesses and as such, he does not deserve the leniency of the court in grant of relief of regular bail and finally prayer for its dismissal has been made.

7. After hearing rival contentions of both the parties and perusing the record, it reveals that the allegations against the accused are to the effect that he entered into the house of prosecutrix and violated her person against her wish. These allegations are very serious and grave in nature. Now much stress has been given by learned counsel for accused-applicant on the point that the material witnesses have already been examined and as such the accused may be granted bail,

but the perusal of file would show that FSL/DNA report is awaited in this case and the consideration of that report is very much material to reach the just conclusion of the case. Even in the statement recorded under Section 164 Cr.PC, the prosecutrix/complainant raised allegations against the present accused-applicant. Further, the 1st bail application of the accused-applicant was dismissed by this Court and no new ground has been put forthwith by the accused. No doubt accused-applicant is in custody and challan has been presented and some witnesses have been examined, but this court is of the considered view that there are other material witnesses are yet to be examined and there is every likelihood that in case accused/applicant is granted bail, he might try to influence the prosecution witnesses and also might try to hamper the proceedings of the trial. So, in light of the aforementioned circumstances, taking into consideration the gravity of the offences so involved, this court is not inclined to release the accused on bail. Consequently, the bail application of accused-applicant is dismissed.

8. Although this bail application is being dismissed, but it is made clear that nothing as expressed in the said order shall have any bearing on the merits of the main case. Papers of bail application be tagged with the main file.

Pronounced in the open Court
Dated: 16.01.2023
Dilbag Singh, Steno-II

(Ajit Pal Singh)
Addl. Sessions Judge,
Gurdaspur. UID no. PB0226