

(2018) 02 RAJ CK 0047
In the Rajasthan High Court
Case No : 1217 of 2018

Sahiram S/o Shri Lekhram

APPELLANT

Vs

State of Rajastha

RESPONDENT

Date of Decision : 26-02-2018

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 438](#) - Direction for grant of bail to person apprehending arrest

Citation : (2018) 02 RAJ CK 0047

Hon'ble Judges : Sandeep Mehta

Bench : Single Bench

Advocate : Mahaveer Bishnoi, Deepak Choudhary, Nishant Bora, Ashok Bibhu

Final Decision : Allowed

Judgement

1. Heard.

2. The instant bail application under Section 438 CrPC has been moved by petitioner accused Sahiram apprehending arrest in connection with FIR

No.111/2016 registered at Police Station Sri Balaji. The FIR came to be lodged by the complainant Sushri "S", wife of Subhash Bishnoi at the

Police Station Sri Balaji on 08.08.2016. The lady alleged in the FIR that she was married to Subhash Bishnoi in her childhood. For the last four

years, she has been living at her matrimonial home. Her husband was working in RAC. She used to live at her matrimonial home with her father-in-

law and mother-in-law. Her mother-in-law recently passed away about 20-25 days before lodging of the FIR. She alleged that her husband was

not maintaining any kind of relations with her for last one and half years. About a year ago, she had gone to the "bada" for attending the nature's

call and spotting her alone, accused Kailash took advantage and subjected her to

rape. He also snapped her indecent photographs and threatened that if the incident was disclosed to anybody, the photographs would be made viral. Three months later, while her mother-in-law had gone to her paternal home; her father-in-law had gone to attend a marriage and her husband was at Jodhpur, taking advantage of this situation, the present petitioner and Subhash, who works in Police, came there and showed her the photographs snapped by Kailash. She was also threatened on gunpoint and the present petitioner as well as Subhash subjected her to rape one after the other. They also snapped pictures of each other having sexual relations with the lady and then threatened her and went away. Thereafter, Kailash, Sahi Ram and Subhash often subjected her to rape. In the month of January, just after she had completed her periods, Sahiram subjected her to rape, on which she conceived. After two months she told this fact to her sister Kavita, who was married to her Jeth Rajaram. Kavita warned her that in case she discussed with anybody about the incident, she might be turned out of the matrimonial home. When she became seven months pregnant, she somehow mustered courage to tell her husband of the incident, upon which, the FIR came to be lodged.

3. Initially, the FIR was registered against Sahiram, Kailash and Subhash. However, after conducting thorough Investigation, the Investigating Officer has reached to a categorical finding that accused Subhash and Kailash had been falsely implicated in this case. The DNA report of the fetus carried by the prosecutrix has matched with the petitioner's DNA. Apprehending arrest in connection with the above FIR, the petitioner approached the Court of Sessions Judge, Nagaur for grant of pre-arrest bail by filing an application under Section 438 CrPC, which came to be rejected on 18.01.2018 and hence, this pre-arrest bail application.

4. Mr. Bishnoi, learned counsel representing the petitioner, urges that even if the case set up in the belated FIR lodged by the complainant prosecutrix is accepted to be true on the face of record, manifestly, the relations between her and the petitioner were consensual. She concealed the fact of the alleged sexual assault from the husband, father-in-law and mother-in-law. Even when she shared this information with her sister Kavita just two months after the incident, she was advised not to disclose it so as to avoid the consequence of being turned out from the

matrimonial home. He urges that these circumstances give clear indication that the prosecutrix was having an extramarital affair with the present

petitioner and tried to delay the disclosure thereof as long as possible. However, when finally her pregnancy started to reflect in appearance, she

was left with no option, but to tell her husband about the relationship and then the entirely concocted story was designed so as to somehow or the

other, save the family from ignominy. He, thus, urges that the petitioner deserves to be granted bail.

5. Per contra, learned Public Prosecutor and Mr. Nishant Bora, learned counsel representing the complainant, vehemently opposed the

submissions advanced by the petitioner's counsel.

6. Nevertheless, learned Public Prosecutor candidly conceded that the Investigating Officer has not found the accused Kailash, who is alleged to

have made first assault on the complainant, and Subhash involved in the case. It is undisputed that when the complainant shared the information

with her sister, who was also married in the same family, she was advised to keep her mouth shut, because the disclosure would put her

matrimonial ties in danger. Admittedly, the complainant's husband was not having any kind of physical relations with her. Pregnancy of the

complainant was bound to show after four to five months and thus, silence of the complainant in reporting the matter is clearly indicative of a story

entirely different from what has been portrayed in the FIR. These facts clearly indicate that the prosecutrix was in some kind of consensual

relationship with the petitioner, which she was trying to conceal from her family members.

7. In this background and having regard to the entirety of facts and circumstances as available on record and upon a consideration of the

arguments advanced at the Bar, this Court is of the opinion that it is a fit case for grant of pre-arrest bail to the petitioner under Section 438

Cr.P.C.

8. Accordingly, the bail application is allowed and it is directed that in the event of arrest of petitioner Sahiram S/o shri Lekhram in connection with

F.I.R. No.111/2016 registered at Police Station Sri Balaji, District Nagaur, the petitioner shall be released on bail; provided he furnishes a

personal bond in the sum of Rs.50,000/- along with two sureties of Rs.25,000/-

each to the satisfaction of the concerned Investigating

Officer/S.H.O. on the following conditions :-

(i) that the petitioner(s) shall make himself/herself/themselves available for interrogation by a police officer as and when required;

(ii) that the petitioner(s) shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case

so as to dissuade him from disclosing such facts to the court or any police officer; and

(iii) that the petitioner(s) shall not leave India without previous permission of the court.