

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Date of decision: 06.09.2022

1. CRM-M No.23801 of 2021 (O&M)

Palak Dhir

....Petitioner

Versus

State of Punjab

....Respondent

2. CRM-M No.29022 of 2021 (O&M)

Kunal Dheer

....Petitioner

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Rishu Mahajan, Advocate
for the petitioners.

Mr. S.S. Goripuria, DAG, Punjab.

Mr. Navraj Singh Mahal, Advocate
for the complainant.

ARVIND SINGH SANGWAN J. (Oral)

The petition i.e. CRM-M-23801-2021, is the 1st petition filed by the petitioner – Palak Dhir for grant of regular bail in FIR No.200 dated 17.11.2020, for offence punishable under Sections 376, 384, 120-B, 411 of the Indian Penal Code, 1860 (in short 'IPC') and Section 67-A of the Information Technology Act, 2000, registered at Police Station Division No.1, District Jalandhar whereas the petition i.e. CRM-M-29022-2021, is the 2nd petition filed by the petitioner – Kunal Dheer in the same FIR as the earlier one was dismissed as withdrawn on 26.02.2021.

Counsel for the petitioners has submitted that the new ground for filing the petition i.e. CRM-M-29022-2021, is that both the petitioners are husband and wife and they are in custody for more than 01 year and 10 months and the statement of the doctor as well as the victim has already been recorded.

Counsel for the petitioners has further submitted that as per the allegations in the FIR, registered at the instance of the victim 'J' (name not disclosed), it is stated that in the month of July/August, 2019, the petitioners hired the upper portion of the house of her maternal uncle on rent and started visiting the house of the victim also. The petitioner – Palak Dhir was running a Boutique and the victim used to get clothes stitched from the petitioner – Palak Dhir. In the month of July, 2018, the victim recorded a song and uploaded on Star Makers Application and came in contact with a boy name Shubham Kumar, who became friendly with her. In March/April, 2019, Shubham started threatening her and she narrated this incident to the petitioner – Palak Dhir. The petitioner – Palak Dhir introduced the victim with co-accused Gaurav Sehgal @ Sunny Baba, who is working as an Astrologer/Tantrik.

On 25/26.12.2019, both the petitioners called the said person i.e. Sunny Baba to their house and introduced her where the victim narrated the entire incident with regard to Shubham Kumar and Sunny Baba assured that he can solve the problems with his eternal powers and gave something wrapped in a black clothes by taking Rs.5,800/-. Thereafter, she stopped getting phone calls from Shubham Kumar. It is further stated in the FIR that the victim wanted to go

abroad for higher studies and her family members were reluctant in doing so and again, they approached the petitioners and they assured that they will talk to Sunny Baba for redressal of her problems. On this, Sunny Baba told that he needs to find out that whether she has a mole on her body and asked her to remove the clothes and in that process, some obnoxious video was prepared by Sunny Baba.

Counsel for the petitioner has further argued that the prosecution has examined certain witnesses and it has come in the statement of PW-1 Dr. Deep Shika, Medical Officer, Civil Hospital, Jalandhar that on 27.11.2020, the victim 'J' was produced before her for medico legal examination regarding some sexual assault. The operative part of the statement of PW-1 Dr. Deep Shikha, Medical officer, Civil Hospital, Jalandhar, reads as under:-

“Since the alleged sexual assault took place in the second week of January, 2020 and ten months had passed since then as she was produced before me in November, 2020, so I made my report underneath the said police request to the effect that the gap between assault and examination is more than ten months so vault and vaginal smear for presence of spermatazoa not taken. LMP-26//2020. Since victim is menstruating perineal examination could not be done. Advised UPD and USG pelvis. I advised 'J' to come after menses for examination. I made by report Ex.PW1/B to the above effect.”

Counsel for the petitioner has also submitted that even the victim has appeared and made a statement on oath, reiterating the version given in the FIR. It is also submitted that against the petitioner – Palak Dhir, only the offence under Section 64-A of the Information

Technology Act, will be made out and for the first offender, the maximum punishment is 05 years and the petitioner is not involved in any other case and has undergone the custody of about 01 year and 10 months.

Counsel for the petitioner with regard to the petitioner – Kunal Dhir, there is no allegation that he has committed the sexual assault on the victim as the allegations against the petitioners are that they have only introduced the co-accused Sunny Baba, at their residence, which is a rented accommodation in the house of the maternal uncle of the victim where Sunny Baba has recorded some nude pictures of the victim. It is further contended that even against Kunal Dhir, there is no allegation that he is involve in any such or similar activities prior to registration of this case.

Counsel for the complainant has, however, opposed the prayer for bail on the ground that during the investigation, the victim has recorded a statement under Section 161 Cr.P.C. that the petitioners have pressed upon her to sell her kidney to arrange the money.

Counsel for the State, on instructions from ASI Baljit Kaur, and on the basis of the Custody Certificate has also not disputed the fact that the statement of the victim as well as doctor has been recorded and the medical evidence do not suggest that the victim was subjected to sexual assault, however, it is submitted that the co-accused Sunny Baba has recorded a nude video of the victim.

After hearing the counsel for the parties, without commenting anything on merits of the case, considering the fact that the petitioner – Palak Dhir is a lady and there is no allegation of sexual

assault against the petitioner – Kunal Dhir and the fact that the primary allegations against both the petitioners are that they have introduced the victim with Sunny Baba and further demanded money from her and further in view of the fact that both petitioners are in custody for the last about 01 year and 10 months; the petitioners are not involved in any other case; the custodial interrogation of the petitioners is not required and the conclusion of the trial will take some time, both these petitions are allowed and the petitioners namely Palak Dhir and Kunal Dhir, are directed to be released on bail subject to their furnishing bail/surety bonds to the satisfaction of the trial Court/Illaqa Magistrate/Duty Magistrate.

However, it will be open for the prosecution to apply for cancellation of bail of the petitioners, in case they are found involved in any other case or misusing the concession of bail, in any manner.

A photocopy of this order be placed on the file of other connected case.

(ARVIND SINGH SANGWAN)
JUDGE

06.09.2022

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Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No