



IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

210

CRM-M-31690-2024

Date of decision: 11.07.2024

Bharat @ Bhagirath

..... Petitioner

Versus

State of Haryana

..... Respondent

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

PRESENT: Mr. Abhimanu Jangra, Advocate for the petitioner.

Ms. Deepshikha Chauhan, AAG, Haryana.

Mr. Shakti Singh, Advocate for the complainant.

NIDHI GUPTA, J.(ORAL)

Memo of appearance filed on behalf of the complainant is taken on record.

Prayer in this 2nd petition filed under Section 439 Cr.P.C., is for grant of regular bail to the petitioner in case FIR No. 18 dated 14.01.2023 registered under Sections 363, 366A, 419, 465, 471 and 201 IPC and Section 6 of the Protection of Children from Sexual Offences Act, 2012 at Police Station Saran, District Faridabad.

The aforesaid FIR was registered on the basis of a complaint moved by the father of the victim, which is reproduced as under:-

“To Chowki In charge, Parvatriya Colony, Faridabad. It is stated that I am Anil, son of Nanak Singh, resident of house no. 1452, Parvatiya Colony, street no. 119 near Shri Ram Sweet House, Faridabad. Sir, my daughter xxxx, aged 17 years, who studies in SDM School, left home to go to school on 13.01.2023 at around 09.30 am. She has not reached



school nor has she returned home till now. When I personally started searching for my girl, I came to know that Bharat aged 35 years old son of Ramchandra, resident of village Mahachana, tehsil Pataudi, district Gurugram, who is our relative, riding on his motorcycle CT-100 No. HR-72-E-2308, he induced my daughter xxxx and took her away with the intention of marriage. That's why I have come today to lodge a missing report of my daughter xxxx. The appearance of my daughter xxxx-fair complexion, round face, medium body and height of about 5 feet and while going to school she was wearing a red checkered shirt, chocolate coloured pant and black and white jacket and shoes in her feet. It is requested that my daughter should be searched by taking appropriate action.....”

Learned counsel for the petitioner, *inter alia*, submits that the allegations levelled in the present FIR against the petitioner are utterly false, fabricated and baseless. It is submitted that in actual fact, the complainant side had borrowed an amount of Rs.17,00,000/- from the petitioner and when the petitioner had demanded back the said money, they registered the present FIR against the petitioner. It is stated that the petitioner has no connection whatsoever with the incident of 13.01.2023 when the victim went missing. In actual fact on the said dates i.e. from 14.01.2023 when the victim went missing till 21.01.2023 when she was recovered, the petitioner was on a pilgrimage with his wife. It is stated that the Aadhaar card of the wife of the petitioner is on record of the hotel where the petitioner stayed during those dates. It is vehemently denied that the petitioner had anything to do with the entire incident, let alone enticing or abducting the victim/daughter of the complainant.

It is stated that even as per MLR dated 21.01.2023 (Annexure P-2), it has been opined that no sexual assault was committed upon the victim. In fact, in the first instance, samples were not collected from the victim. Moreover, even as per the statement of the victim dated



22.01.2023 (Annexure P-3) recorded under Section 164 Cr.P.C., (at page 31 of the paper-book) she had stated that '*...My maternal uncle Bharat had taken me by misleading me. He did not force himself upon me. He did not do any wrong act with me. He had kept me well. He did not hit me and neither do I want any action against him*'. Accordingly, it is submitted that the petitioner has been falsely implicated in the present case. Moreover, he has been in custody since 21.01.2023. Thus, it is prayed that the petitioner may be released on regular bail.

No other argument is raised on behalf of the petitioner.

Per Contra, learned counsel for the State vehemently opposes the prayer for grant of regular bail to the petitioner and submits that at the time of alleged occurrence the victim was minor aged about 17 years. The victim is a niece of the petitioner, inasmuch as, petitioner is the maternal uncle/Mama of the victim. On 21.1.2023, the victim was recovered from the custody of the petitioner, whereafter he was arrested. It is stated that the victim was taken by the petitioner to Gurugram, Jaipur and then to an Ashram in Vrindavan. From the above statement of the victim at Annexure P-3, it is evident that she was in the custody of the petitioner from 13.1.2023, till 21.1.2023. Even in her testimony the victim has fully supported the prosecution case. Ld. State counsel further refers to the MLR (Annexure P-8) wherein it has been recorded that '*no mark of external injury seen. possibility of sexual intercourse cannot be ruled out*'. Further, learned State counsel submits that the story put forth by the petitioner that from 14.01.2023 when the victim went missing till 21.01.2023 i.e. for about 07 days, the petitioner along with his wife was



on pilgrimage is utterly false, as a complaint under the provisions of the Hindu Marriage Act, 1955, was filed against the petitioner by his wife.

Learned counsel for the State has filed custody certificate dated 10.07.2024, which is taken on record, as per which the petitioner has been in custody as an undertrial for a period of 01 year, 05 months and 20 days. On instructions from ASI Prem Chand, learned counsel for the State informs that out of total 25 prosecution witnesses, only 01 witness i.e. the victim has been examined so far.

I have heard learned counsel for the parties.

It may be pointed out that the learned trial Court vide impugned order dated 24.05.2024 (Annexure P-12), while dismissing the 5th bail application of the petitioner in para 9 thereof (at page 69 of the paper-book) reasoned as under:-

“9. The allegations leveled against the petitioner-accused are serious and specific. The trial of the case is at initial stage and parents of the prosecutrix are yet to be examined before the Court. Therefore, argument of learned Public Prosecutor for the State carries merit that if the applicant/accused is released on bail, then he may intimidate the witnesses or hamper the trial. There is every apprehension that the applicant will tamper with the evidence, if he is release on bail. There is also a possibility that applicant-accused may abscond in order to evade trial keeping in view the seriousness of charge against him. No fresh ground has arisen for the accused to file present bail application after the dismissal of earlier bail application by the Hon’ble High Court except increase in custody period and prosecutrix has been examined.”

Having heard learned counsel for the parties, and without commenting on the merits of the case, however, keeping in view the totality of the facts and circumstances of the present case; including the fact that perusal of custody certificate shows that the petitioner is also



involved in 03 more cases i.e. (i) FIR No. 364 dated 10.07.2019, registered under Sections 323, 506, 452 read with Section 34 IPC at Police Station Sector 9A, Gurugram; (ii) Complaint No. 254/2023 under Section Hindu Marriage Act, pending adjudication before the learned Family Court, Hathin; and (iii) FIR No. 57 dated 23.01.2023 registered under Sections 323, 365, 379-B, 506 read with Section 34 IPC at Police Station Sector 58, Faridabad; as also the fact that the material witness i.e. the complainant is yet to be examined by the learned trial Court, I find that no ground is made out at this stage to grant regular bail to the petitioner. Accordingly, the present petition is **dismissed**.

However, nothing stated here-in-above shall be construed to be an expression of opinion on the merits of the case.

11.07.2024
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(NIDHI GUPTA)
JUDGE

Whether speaking/reasoned Yes/No

Whether Reportable Yes/No