

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

CRM-M 17030-2020

Date of Decision : July 16, 2020

Manoj @ Monu

....Petitioner

Versus

State of Haryana

....Respondent

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Mr. Abhimanyu Singh, Advocate
for the petitioner.

Mr. Ramesh Kumar Ambavat, DAG, Haryana.
(through video conferencing).

ARVIND SINGH SANGWAN, J. (Oral)

This is the first petition under Section 439 Cr.P.C. for grant of regular bail to the petitioner in case FIR No.08 dated 19.4.2018 under Sections 506, 120-B IPC and Section 6 of the POCSO Act, 2012 registered at Police Station Women, Manesar, District Gurugram.

Counsel for the petitioner submits that as per the allegations in the FIR, the victim 'N' (name not disclosed), has given a complaint against the petitioner that she is a minor and the petitioner, is her brother-in-law (Jija), as her elder sister Megha is married to petitioner-Manoj @ Monu. Counsel for the petitioner further submits that as per the allegations in the FIR, on 18.4.2018, the petitioner committed rape upon her and, thereafter, she came out of the house and called her mother to contact to the police.

Counsel for the petitioner also submits that the petitioner was arrested on 20.4.2018 and since then he is in custody and 08

prosecution witnesses, including victim have been examined and due to the COVID-19 pandemic situation, the trial is not proceeding further. It is further submitted that though the allegations against the petitioner are that he has committed the offence at her house, yet as per the site plan, the house consists of only one room and, therefore, there was no such possibility of committing the offence that too in the presence of the wife of the petitioner, who is none other than the real sister of the victim.

Counsel for the petitioner further submits that the petitioner has been falsely implicated on account of the fact that on a previous occasion, even the wife of the petitioner Megha got an FIR No.381 dated 23.8.2015 registered under Section 6 of the POCSO Act. Counsel for the petitioner submits that in that proceedings, the statement of the wife of the petitioner Megha was recorded, where she stated that she and petitioner were having love affair and had secretly performed the marriage in the year 2015 and when her parents came to know, they put pressure on her to give a complaint forming basis of this FIR.

Counsel for the petitioner further submits that since Megha did not support the prosecution version, he was granted bail in the said FIR. Counsel has referred to the cross-examination of Megha in the said FIR, wherein she has stated that her grand-father and mother were having illicit relations and she (Megha) lodged an FIR No.66 of 2018 under Sections 376, 506, 120-B IPC at Police Station Women West, Gurugram against them. This witness further stated that even her grand-father had committed rape with her. The counsel has, thus, submitted that the petitioner is being repeatedly involved in false FIRs at the instance of the family of her wife and the present FIR is also an

outcome of the same as the petitioner and the mother of the victim are having a dispute regarding money.

Counsel for the petitioner has further referred to the statement of the victim 'N' (name not disclosed), who appeared as PW1 to submit that she has given a different version as given in the FIR. In the FIR, there is no allegation regarding the fact that Megha, her sister knew about the offence committed by the petitioner. However, she made some improvements while appearing as PW1, wherein it is stated that when petitioner committed rape upon her, during that time her sister Megha made a video.

Counsel for the petitioner also submits that in cross-examination when this victim was confronted with her statement under Section 164 Cr.P.C., wherein she stated that when the petitioner committed rape upon her, her sister Megha woke up and again went to sleep and did not help stopping Manoj @ Monu for committing the offence. Counsel for the petitioner further submits that in the cross-examination, this witness it has further come that the petitioner and his wife Megha are running a Rehri of selling food items, from a little distance from their house and, therefore, on account of some money transaction, the petitioner has been falsely implicated.

Counsel for the petitioner has further submitted that the petitioner is a poor man, a daily wager and is in custody for the last more than two years and since the complainant has already been examined, there is no possibility of tampering with the prosecution evidence.

Learned State has submitted that 08 witnesses, including the victim, has been examined and the case is now fixed for the remaining evidence and there is a delay in conclusion of the trial on account of COVID-19 pandemic situation. Counsel has further submitted that Megha was granted the concession of regular bail by this Court vide order dated 6.9.2018 passed in CRM-M-28718-18 noticing the fact that as per the FIR, there is no allegation that Megha had conspired with her husband, i.e. petitioner for committing the offence.

After hearing learned counsel for the parties and without commenting anything on merits of the case; considering the long custody of the petitioner and in view of the facts and circumstances of the case, this petition is allowed and the petitioner is directed to be released on bail subject to his furnishing bail/surety bonds to the satisfaction of the trial Court/Illaq Magistrate/Duty Magistrate.

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

(ARVIND SINGH SANGWAN)
JUDGE

July 16, 2020
satish

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