

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

**CRM-M-16987-2020
Date of decision: 26.11.2020**

Arun

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Mr. Kushagra Beniwal, Advocate
for the petitioner.

Mr. Deepak Kumar Grewal, DAG, Haryana.

Mr. Mohit Chaudhary, Advocate
for the complainant.

ARVIND SINGH SANGWAN, J. (Oral)

This petition has been filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the petitioner in case FIR No. 452 dated 26.07.2018, registered under Sections 452, 506 of the IPC and Sections 6, 17 of the POCSO Act, 2012 at Police Station Shivaji Colony, Rohtak.

Learned counsel for the petitioner submits that as per the allegations in the FIR, registered at the instance of complainant/victim (name withheld), it is stated that her date of birth is 01.04.2000 and she had left her studies after completing 10+2. It is further stated that a girl, living in her neighborhood, introduced her with Arun (petitioner herein) about three years ago and on 15.04.2015, the petitioner made illicit physical relationship with her on the pretext of marriage. At that time, co-accused Sumit and Nidhi were guarding the gate of cattle shed, where petitioner made physical

relationship with her for the first time. Thereafter, in a period of about three years, petitioner made physical relationship with victim and when she informed the petitioner that she is having seven months' pregnancy, on his mobile No. 8168359466, the petitioner advised her to abort the child, otherwise, he and Sumit would kill her. With these allegations, the present FIR was registered.

Learned counsel for the petitioner further submits that the petitioner was arrested on 31.07.2018 and his medical examination was conducted. It is further submitted that *challan* stands presented and as per investigation report, co-accused Nidhi was granted concession of bail on 01.09.2018 and co-accused Sumit was arrested on 06.08.2018. In the meantime, the child was born and blood samples were sent to FSL for examination.

Learned counsel for the petitioner further argues that co-accused of the petitioner, namely Sumit, has already been granted concession of regular bail by this Court, vide order dated 03.06.2020 passed in ***CRM-M-12759-2020***. The operative part of the order reads as under:

“It is contended by the counsel for the petitioner that the case against the petitioner has been totally concocted; for mala fide reasons. Even as per the prosecutrix she was having relation with one Arun, who is alleged to have repeated sexual intercourse with the prosecutrix. Even that seems to be with consent only because the prosecutrix has stated that he was doing so on the pretext of marrying her. In the initial stage, there has not been any allegation against the petitioner qua any actual participation in any wrong doing with the prosecutrix. As per the case of the prosecution, the

petitioner and one Nidhi used to stand outside to guard the house whenever Arun used to get into the house of the prosecutrix. Subsequently, the prosecutrix had tried to improve the allegation by submitting that even the present petitioner has done wrong with her. However, no detail, whatsoever, has been given by the prosecutrix. Not only this, the prosecutrix has given birth to a child. The DNA report of the child is also matching with Arun only. It is also pointed out that the co-accused of the petitioner, namely, Nidhi, against whom the allegations are similar to the petitioner, has already been released on bail. The petitioner is in custody for about one year eight months. The petitioner is not required for any investigation purposes.

Notice of motion.

Mr. Anmol Malik, AAG, Haryana, accepts notice on behalf of the State of Punjab.

Learned State counsel, on instructions from ASI Neelam Kumari, submits that name of the petitioner has specifically surfaced during the investigation. Although, initially the prosecutrix had not named the petitioner as the main person, however, she has subsequently given in writing that the petitioner has also done wrong acts with her. However, it is not disputed that the DNA report of the child, to whom the girl has given birth, matches only with Arun. It is also not disputed that the co-accused of the petitioner have already been released on bail and that the petitioner is in custody for about one year and eight months now.

In view the above, but without expressing any further opinion on the merits of the case, the present petition is allowed. The petitioner is ordered to be released on bail pending trial subject to his furnishing bail bonds/surety to the satisfaction of the Trial

Court/Duty Magistrate, concerned.”

Learned counsel for the petitioner further submits that petitioner is in judicial custody for about two years and four months and due to COVID-19 situation, the trial is not proceeding.

Learned counsel for the petitioner next argues that as per allegation in the FIR, the same was got registered after a long delay as it is stated that when the victim was pregnant for seven months, she got the present FIR registered, therefore, the victim was a consenting party.

It is worth noticing here that on 16.07.2020, it was noticed that as per DNA report, the petitioner is the father of the minor child of the victim and learned counsel for the petitioner sought time to get instructions whether he is ready to deposit a sum of Rs. 05 Lakh in an FDR in the name of minor child. Thereafter, on 11.08.2020, learned counsel for the complainant also stated that petitioner be asked to hand over a demand draft of Rs. 05 Lakh favouring the victim, however, on 21.08.2020, learned counsel for the complainant submitted that victim is not ready to accept the aforesaid amount.

Even today, during the course of arguments, learned counsel for the petitioner submitted that petitioner is ready to deposit a sum of Rs. 05 Lakh in an FDR in the name of minor child, without any prejudice to his right of defence, however, learned counsel for the complainant submitted that this is not acceptable.

Learned State counsel submitted that the victim was allured by the petitioner to obtain her consent on the pretext of performing marriage and, therefore, he is not entitled to bail.

Learned counsel for the complainant has referred to a judgment dated 17.03.2020 passed by a Division Bench of this Court in ***CRA-D-1158-DB-2018***, titled as ***Pardeep Kumar and Ors. vs. State of Punjab and Ors.***, to argue that where the victim was below the age of 16 years, the conviction was upheld.

Learned counsel for the complainant has also relied upon a judgment rendered by Hon'ble Supreme Court in ***(2015) 7 SCC 359 Satish Kumar Jayanti Lal Dabgar vs. State of Gujarat***, wherein the similar view was taken and sentence of the convict was not reduced.

However, the aforesaid judgments are not applicable in the present case as the Court is not insisting upon any compromise between the parties as it is the petitioner who has volunteered to deposit a sum of Rs. 05 Lakh in an FDR in the name of minor child, without any prejudice to his right of defence. Even, learned counsel for the petitioner has placed on record photocopy of a demand draft to show that the petitioner has already got prepared a demand draft of Rs. 05 Lakh favouring the victim.

I have heard learned counsel for the parties.

Without making any comment on the merits of the case, considering the long custody period of the petitioner, i.e. about two years and four months, and the trial is yet to start and also in view of the fact that he has volunteered to deposit a sum of Rs. 05 Lakh in an FDR in the name of minor child, the present petition is allowed. The petitioner is ordered to be released on regular bail on his furnishing bail/surety bonds to the satisfaction of the trial Court/Duty Magistrate/Illaqua Magistrate, concerned and on deposit of Rs. 05 Lakh with the trial Court/Illaqua Magistrate.

It is made clear that the trial Court/Illaqua Magistrate will give a notice to the victim either to accept the said amount, without any prejudice either to right of defence of petitioner or right of the victim to lead prosecution evidence or the said amount shall be kept in an FDR in the name of the minor child with the victim as a guardian, subject to final outcome of the case.

26.11.2020
Waseem Ansari

(ARVIND SINGH SANGWAN)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No