

224 (3 cases)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(Through Video Conferencing)

1.

CRM-M-40437-2020

Date of Decision: 01.09.2021

RAKESH @ GOLU

.....Petitioner

V/s.

STATE OF HARYANA AND ANOTHER

.....Respondents

2.

CRM-M-1727-2021

TUSHAR

.....Petitioner

V/s.

STATE OF HARYANA AND ANOTHER

.....Respondents

3.

CRM-M-29337-2020

DEVINDER

.....Petitioner

V/s.

STATE OF HARYANA AND ANOTHER

.....Respondents

CORAM: **HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL.**

Present: Mr. Bijender Singh Dhankhar, Advocate,
for the petitioner in CRM-M-40437-2020.

Mr. Govind Chauhan, Advocate,
for the petitioner in CRM-M-1727-2021.

Mr. Birinder Singh Khehar, Advocate,
for the petitioner in CRM-M-29337-2020.

Ms. Tanushree Gupta, DAG, Haryana.

MANJARI NEHRU KAUL, J. (Oral)

This order shall dispose of 3 connected criminal petitions bearing No. CRM-M-40437-2020, CRM-M-1727-2021 and CRM-M-29337-2020 as the all the three petitions have arisen out of the same FIR.

The prayer in these petitions filed under Section 439 of the Code of Criminal Procedure, 1973 is for grant of regular bail to the petitioner(s) in case FIR No.312 dated 11.07.2020 lodged under Sections 365, 506 and 34 of

the Indian Penal Code, 1860 and Sections 8, 18 of the POCSO Act, 2012 (Initially under POCSO, only 6 was added in the FIR but later on Sections 8 and 18 were substituted) registered at Police Station Gharaunda, District Karnal, Haryana.

Learned counsel for the petitioner(s) contends that on the face of it, a highly improbable story has been put forth in the FIR in question that on 10.07.2020 at about 8.30 P.M., when the prosecutrix alongwith her cousin was going to buy a book, the car in which the accused-petitioner(s) were travelling, stopped near her; the prosecutrix was dragged inside the said car and while in the car all the accused-petitioner(s) had indulged in inappropriate behaviour by sexually assaulting her. Learned counsel for the petitioner submits that the unexplained delay of 17 hours in lodging of the FIR from the time of alleged occurrence coupled with the fact that the petitioner(s) were not named in the FIR and in addition to the fact that the prosecutrix declined to subject herself to any medical examination lent credence to their false implication in the case in hand.

Learned counsel for the petitioner(s) further submits that the petitioner(s) Rakesh @ Golu and Tushar were nominated later on as an accused on the basis of a disclosure statement allegedly made by co-accused Gaurav (declared juvenile) which admittedly does not have much evidentiary value. A prayer has, therefore, been made that the orders vide which the petitioners were granted interim bail be made absolute.

The relevant portions of the orders dated 16.10.2020, 23.12.2020 and 23.02.2021 passed by this Court (Co-ordinate Bench) are reproduced as follows:-

Order dated 16.10.2020

“XXXX

Since the petitioner is serving in Indian Army and as such, he is not likely to run away, consequently, till the next date of hearing, petitioner be released on interim bail in the present case on his furnishing adequate bail and surety bonds subject to the satisfaction of learned trial Court/CJM/Duty Magistrate concerned.”

Order dated 23.12.2020

“XXXX

“In the meanwhile, in view of the facts and circumstances of the case particularly the fact that the petitioner was not apprehended on the spot and is implicated in the case on the basis of disclosure statement of Gaurav (declared juvenile) and in view of parity with co-accused Devinder who has been granted interim bail by the Coordinate Bench of this Court vide order dated 16.10.2020, the petitioner is ordered to be released on interim regular bail till the next date of hearing on furnishing of personal and surety bonds to the satisfaction of the trial Court/Chief Judicial Magistrate/Duty Magistrate concerned.”

Order dated 23.02.2021

“XXXX

In the meanwhile, in view of the facts and circumstances of the case particularly the fact that the petitioner was not apprehended on the spot and is implicated in the case on the basis of disclosure statement of Gaurav (declared juvenile) and in view of parity with co-accused Devinder and Rakesh @ Golu who have been granted interim regular bail by this Court vide orders dated 16.10.2020 and 23.12.2020 respectively, the petitioner is ordered to be released on interim regular bail till the next date of hearing on furnishing of personal and surety bonds to the satisfaction of the trial Court/Chief Judicial Magistrate/Duty Magistrate concerned.”

Per contra, learned State counsel has vehemently opposed the submissions made by the learned counsel for the petitioner(s) and has submitted that when the victim, aged 15 years, was kidnapped by the petitioner(s), she was threatened to keep quiet or else face dire consequences. They even beat her up when she resisted the assault. Not only had this, her cousin, who was with her at the time of the occurrence, immediately informed his family and the Police too was informed. However, when the accused reached Village Kairwali, District Karnal, tyre of their car burst and two out of the four accused fled taking advantage of the darkness while the remaining two were apprehended at the spot in the presence of hundreds of villagers who gathered there.

Learned State counsel has further submitted that the victim in her statement recorded under Section 164 Cr.P.C. had reiterated the allegations levelled against the petitioner in the FIR and also spelt out the role of each of the petitioners in the alleged in crime question.

Learned State counsel further submits that as far as accused-petitioner, Devinder is concerned, he was not only one of the accused who kidnapped the prosecutrix alongwith the other accused but he was also owner of the car and was driving the same at the time of alleged occurrence. Hence, he was an active participant in the alleged crime.

Learned State counsel has prayed that in the wake of the aforementioned allegations against the petitioners, the petitioners do not deserve the concession of bail more so as the prosecution evidence has not yet commenced and in case the interim regular bail granted to them vide orders dated 16.10.2020, 23.12.2020 and 23.02.2021 is made absolute, they

would tamper with material evidence and try to influence the witnesses to depose in their favour.

Heard.

Prima facie, there are serious allegations against the petitioner(s) of kidnapping and thereafter sexually assaulting a minor, aged 15 years, for which they do not deserve the concession of bail. In view thereof, all three petitions stand dismissed and the orders dated 16.10.2020, 23.12.2020 and 23.02.2021 passed by this Court (Co-ordinate bench) granting interim bail to the petitioner(s) hereby stands withdrawn. The petitioner(s) are directed to surrender back to the jail concerned positively on 04.09.2021 by 5.00 P.M.

A photocopy of this order be placed on the files of the connected cases.

September 1, 2021

Ess Kay

[MANJARI NEHRU KAUL]
JUDGE

Whether speaking / reasoned	:	Yes	/	No
Whether Reportable	:	Yes	/	No