

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

207

CRM-M-36812-2021 (O & M)
Date of decision:15.11.2021

Kuldeep

... Petitioner

Vs.

State of Haryana and another

... Respondents

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr. Aditya Sanghi, Advocate for the petitioner.

Ms. Deepshikha Chauhan, AAG, Haryana.

SUVIR SEHGAL J. (ORAL)

Heard through video conferencing.

CRM-28703-2021

Application is allowed.

Petitioner is permitted to place on record the true typed copies
of the annexures.

Main Case

This is the third petition filed by the petitioner under Section 439 of Cr.P.C. for grant of regular bail in case FIR No.20, dated 22.01.2020 registered for offence under Section 08 of the Protection of Children from Sexual Offences Act, 2012, and Sections 506/506(II) of IPC, 1860, at Police Station Nangal Chaudhary, District Mahendergarh, Haryana, Annexure P-2.

FIR, Annexure P-2, came to be registered on the statement of the prosecutrix/victim on the allegation that in the year 2015, when she was studying in a school, accused-Kuldeep (present petitioner) took her to a hotel at Royal Delhi Road, Behrod and committed rape upon her, made a video clip and threatened her that, in case, she revealed the incident to anyone, he will leak the video. He also wanted to marry her but he is now refusing to do so. The victim was 16 years of age at that time.

Counsel for the petitioner submits that there is a delay of almost 05 years in lodging of the FIR. He submits that in her statement under Section 164 Cr.P.C., recorded before the Magistrate on 24.01.2020, Annexure P-3, she changed her stand and stated that she had been molested, a video was prepared but the accused did not commit rape and that she was later married to one Pardeep on 08.03.2019 and the petitioner has been blackmailing and harassing her and has been threatening to upload her video. Counsel submits that while appearing in the witness-box as prosecution witness No.1, the victim has stated that after her marriage with Pardeep, she was in touch with the accused-Kuldeep on phone and her parents came to know about it but Kuldeep never committed any sexual assault upon her. By referring to her cross-examination, counsel submits that she has not only resiled from the allegation made in the FIR, but specifically said that she never stated before the police that any sexual assault had been committed upon her in 2015 and that prior to December, 2018, accused-Kuldeep was not known to her. Still further, counsel submits that the statements of the victim are

inconsistent, there is no incriminating material with the prosecution as the prosecutrix had refused to get herself medically examined. He submits that though this is the third petition seeking grant of regular bail preferred by the petitioner after the first petition (CRM-M-21909-2020) was withdrawn after arguments on 14.08.2020 and the second petition (CRM-M-41574-2020) was withdrawn with liberty to approach the Sessions Court, in view of the change in circumstances. He asserts that the petitioner, who has clean antecedents and is suffering incarceration since 23.03.2020, deserves to be released on bail in view of the above change in circumstances as the victim has been examined in Court on 11.08.2021 and has not supported the prosecution.

Per contra, learned State counsel upon instructions from HC Rajiv, has opposed the petition on the ground that the allegations levelled against the petitioner are of a very serious nature and though the prosecutrix has taken a 'U' turn but the circumstances under which she has resiled from her original statement are not difficult to guess. Upon instructions and by making a reference to the reply filed by way of an affidavit of Deputy Superintendent of Police (HQ), Narnaul, District Mahendergarh, she could not deny the fact that the prosecutrix was not medically examined because of her refusal. She submits that challan has been presented on 14.05.2020, charges have been framed on 05.03.2021 and 01 out of 11 prosecution witnesses has been examined.

I have considered the respective submissions of counsel for the parties.

Keeping in view the facts and circumstances of the case, the allegation against the petitioner would remain a subject matter of debate before the trial court and the petitioner, who is in custody for the last more than 01 year and 07 months would be entitled to be released on bail as the trial is at an initial stage and is likely to take time to conclude.

Without commenting upon the merits or de-merits of the arguments addressed by the counsel for the parties, the petition is allowed. The petitioner is ordered to be released on bail on furnishing bail/surety bonds to the satisfaction of the trial Court/Duty Magistrate concerned.

While being released on bail, the petitioner shall furnish an undertaking to the effect that he will not try to contact the prosecutrix or her family members or in any way try to intimidate or harm them in any way.

It is clarified that any observation made hereinabove shall not be construed to be an expression of opinion on the merits of the case.

15.11.2021

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(SUVIR SEHGAL)
JUDGE

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No