

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Criminal Misc.-M No.32448 of 2020

Date of Decision: March 03, 2021

Maksood & another

...Petitioners

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. Rakesh Dhiman, Advocate,
for the petitioners.

Mr. Kanwar Sanjiv Kumar, AAG, Haryana.

Mr. Rajnikant Upadhyay, Advocate,
for the complainant.

MANOJ BAJAJ, J. (Oral)

Petitioners have filed this petition under Section 439 Cr.P.C. for grant of regular bail, pending trial in case FIR No.40 dated 22.03.2020, under Section 376(d) IPC, 1860 and Section 6 Protection of Children from Sexual Offences, 2012, registered at Police Station, Sohna, District Gurgaon. The petitioners are in custody since their arrest on 22.03.2020.

The above FIR was registered on the complaint of Ayub Khan, wherein it was stated that his daughter Shabrun, who is about 16-17 years old, told him that at about 8.00 p.m., when she was coming back from the house of her elder Abba, namely, Iqbal Ahmed and had walked a little distance from Abba's house upto a boundary wall and it was dark there. She did not know that anyone was coming after her and when she entered the dark area, someone caught her from behind. She looked back at once and

found that Sarif son of Umarddin grabbed her by the waist and Maksood son of Mustaq grabbed her by the feet and lifted her up. Mubarik son of Kallu, Amir son of Mustaq and Tayyab son of Siraju were also with them. Then Tayyab put a cloth on her mouth, whereas Maksood and Sarif raped her repeatedly and the other three accused, Mubarik, Amir and Tayyab stood there and witnessed the crime. On these broad allegations, the above FIR was registered.

Learned counsel for the petitioners has drawn the attention of the court to the testimonies Annexures P-4 to P-6 of the material witnesses (statements of victim and her parents) to contend that the said witnesses have not supported the prosecution case and were declared hostile. He submits that other eye-witnesses have also not supported the prosecution case and, therefore, the further custody of the petitioners may not be necessary. He submits that petitioner No.2 (Sarif) has been recently declared as juvenile by the Additional Sessions Judge, Gurugram vide order dated 13.01.2021, and drew attention of the court to the reply filed by way of affidavit of Sandeep Kumar, HPS, Assistant Commissioner of Police, Sohna. He submits that the further custody of the petitioners may not be necessary and prays for bail.

On the other hand, learned State counsel, assisted by L/ASI Shakuntla, though has opposed the prayer on the ground that scientific evidence has established the commission of the alleged offence, but it is not disputed by him that the material witnesses have been examined. He further states that out of total twenty two prosecution witnesses, seven have been examined.

After hearing the learned counsel for the parties and

considering the fact that the material witnesses have been examined, this Court is of the opinion that the further custody of the petitioners may not be necessary for any useful purpose, who are presently confined in judicial custody after their arrest on 22.03.2020. The prosecution is yet to examine its remaining witnesses and the trial would take considerable time to conclude.

Resultantly, without meaning any expression of opinion on the merits of the case, the petition is allowed and it is ordered that the petitioner be released on regular bail subject to his furnishing requisite bail bonds/surety bonds to the satisfaction of the trial Court/Duty Magistrate, Gurgaon.

March 03, 2021
ramesh

(MANOJ BAJAJ)
JUDGE

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No