

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(204)

CRM No. M-44220-2020

Date of Decision : 08.01.2021

Mamta Devi

....Petitioner

Versus

State of Haryana and another

.....Respondents

(through video conferencing)

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present:- Mr. Sushil Sheoran, Advocate for the petitioner.

Ms. Rajni Gupta, Additional Advocate General, Haryana.

Harsimran Singh Sethi, J. (Oral)

The present petition has been filed under Section 439 Cr.P.C. for the grant of regular bail to the petitioner in respect of FIR No. 24 dated 04.07.2019, under Section 6 of the Protection of Children from Sexual Offences Act, 2012 and under Section 506 IPC (Sections 328, 120-B, 376 (2), 376(3) IPC added later on), registered at Police Station Industrial Sector-29, Panipat, District Panipat.

Learned counsel for the petitioner argues that the petitioner has wrongly been roped in the present petition though, she has nothing to do with the incident as the allegations of rape are against the co-accused, Shravan Kumar. Learned counsel for the petitioner submits that though the complainant and the prosecutrix have already been examined but after the said examination, the mother of the prosecutrix has given an affidavit on

05.07.2020, which is also signed by the minor victim, stating that the statement given by the complainant during the trial was an induced one.

Notice of motion.

Ms. Rajni Gupta, learned Additional Advocate General, Haryana, who appears through video conference, keeping in view the service of advance copy of petition, accepts notice on behalf of the respondent-State. Learned State counsel submits that the prosecutrix as well as the complainant in their testimony had supported the allegation of rape against the co-accused Shravan Kumar as well as the allegation against the present petitioner that she took active part and helped the co-accused Shravan Kumar in executing the misdeed. Learned State counsel argues that no benefit of the affidavit stated to have been given by the mother of the prosecutrix now can be extended to the petitioner so as to secure the benefit of bail as the testimony recorded under oath cannot be ignored or overruled by the said affidavit, veracity of which is yet to be ascertained.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

There are definite allegations against the petitioner wherein, it has been stated that the petitioner as well as the co-accused, Shravan Kumar had called the prosecutrix for tea and after consuming the tea offered by the petitioner, the prosecutrix felt sleepy and the act of rape was committed upon her by co-accused Shravan Kumar in the house of the petitioner. The further allegation is that the petitioner had even video recorded the said act and showed the said video and photographs to the prosecutrix. These allegations were maintained and supported by the complainant and the prosecutrix while being examined during the trial. Affidavit dated

05.07.2020 supposedly given by the complainant, which is also signed by the minor victim, after recording of their testimony, is being relied upon to contend that the statement of the prosecutrix and the complainant recorded during the trial was under inducement. These facts *prima-facie*, show that the petitioner even while in jail is interfering with the conduct of the trial. No benefit of the alleged affidavit can be extended to the petitioner in the facts and circumstances of this case as testimony recorded under oath will prevail over and above the said affidavit, veracity of which is yet to be ascertained. Even otherwise, minor's signature on the affidavit carry no weightage in the facts and circumstances of this case so as to grant the benefit of bail to the petitioner.

Keeping in view the allegations alleged against the petitioner, which are very serious in nature and the act of rape has been committed upon a minor facilitated by the petitioner coupled with the facts and circumstances of the present case, which shows that even while in Jail, the petitioner is *prima-facie* interfering with the trial and it cannot be ruled out that after the grant of bail petitioner will not interfere in the process of justice delivery system, no ground is made out to grant the benefit of regular bail to the petitioner.

Dismissed.

However, it is made clear that anything observed herein shall not be construed to be an expression of any opinion on the merits of the case.

January, 08, 2021
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether reasoned/speaking? *Yes/No*
Whether reportable? *Yes/No*