

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

122

CRM-M-4604 of 2022

Date of decision:02.06.2022

Raj Pal

... Petitioner

Vs.

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr.Sumit S. Bairagi, Advocate
for the petitioner.

Ms. Mahima Yashpal, DAG, Haryana.

SUVIR SEHGAL J.

CRM No.20958 of 2022

Noticing the prayer made in the application, it is allowed.

Date of hearing of the main case is advanced from 23.08.2022

to today and it is ordered to be taken up on Board.

CRM-M-4604 of 2022

This is the third petition filed by the petitioner under Section 439 of the Code of Criminal Procedure, 1973 (for short “the Code”), seeking grant of regular bail to the petitioner in case FIR No.24 dated 13.04.2020 registered for offences under Sections 376(2)(n), 506 of Indian Penal Code, 1860 and Sections 4, 6, 17 of Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as “the “POCSO Act”) at Police Station Women, Assandh, Karnal, District Karnal (Annexure P-1).

Case of the prosecution is that FIR, Annexure P-1, has been registered on the complaint of mother of a 16 years old girl (hereinafter mentioned as “minor prosecutrix”) on the allegation that she noticed some changes in the behaviour of her daughter. She took her into confidence and

asked her the reason. She was told that about one year ago, Kamal had given her some intoxicating substance mixed with *parsad* and on consuming it, she became unconscious. Kamal took advantage of the situation and raped her. He made a video of the incident, has not only been threatening, blackmailing but also, calling her time and again and sexually exploiting her. Last time, when he raped her was on 08.04.2020.

Counsel for the petitioner has contended that the petitioner is neither named in the FIR nor any allegation has been levelled against him. He submits that minor prosecutrix as well as her parents, who have been examined and their testimonies have been placed on record as Annexures P-3 to P-5, have turned hostile. He asserts that the petitioner, who is in custody since 06.05.2020, deserves to be released on bail as the trial is not likely to conclude in the near future.

Opposing the petition, State counsel, upon instructions from L/ASI Sudesh Kumari, has submitted that the petitioner has been charged for offences under Sections 363, 366, 376DA, 506 IPC and Section 6 of the POCSO Act, which fact has not been disclosed by him in the petition. She has made a reference to the statement of the minor prosecutrix recorded before the Magistrate as well as the history of the incident given by her to the doctor. She submits that DNA profile of the accused has been found to have matched. As per her instructions, 10 out of 13 prosecution witnesses, have been examined and the remaining have been summoned for the next date in July, 2022.

I have heard counsel for the parties and considered their respective submissions.

Although the petitioner has not been named in the FIR, but

there are specific allegations against him, in the statement recorded by the minor prosecutrix under Section 164 of the Code, wherein, she has stated that both the accused were hand in glove with each other. Narration of the incident as given to the doctor shows that the minor prosecutrix has been sexually assaulted by two persons. The examination of MLR further shows that there are abrasions on the forehead of minor prosecutrix as well as some external marks of injury on the body. The medical record apparently substantiates the allegations levelled in the FIR. Even though the minor prosecutrix and her parents have not supported the case of the prosecution, but medical documents corroborate the allegations. The probability that the petitioner acted in tandem with the co-accused, cannot be ruled out.

The trial is at an advanced stage as 03 formal witnesses remain to be examined. This Court is, therefore, of the view that release of the petitioner at this stage, is not warranted. Keeping in view the nature of allegations, gravity of offence, age of the minor prosecutrix, stage of the trial, presumption under Section 29 of the POCSO Act, this Court is of the opinion that the concession of regular bail cannot be granted to the petitioner.

The petition, which sans merit, is hereby dismissed.

It is clarified that nothing said hereinabove shall be construed to be an expression of opinion on the merits of the case.

(SUVIR SEHGAL)
JUDGE

June 02, 2022
savita

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