

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

SR. No.105+210

(1)

CRM-M-28809-2022 (O&M)

Reserved on:11.10.2022

Pronounced on :15.11.2022

Asha

...Petitioner

Versus

State of Haryana

...Respondent

(2)

CRM-M-13397-2022 (O&M)

Ravinderpal Singh

..Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE N.S. SHEKHAWAT

Present: Mr. Ashwani Gaur, Advocate,
for the petitioner in CRM-M-28809-2022

Mr. Sachin Chhokar, Advocate,
for the petitioner in CRM-M-13397-2022

Ms. Sheenu Sura, DAG, Haryana.

Mr. Sanjeev Sharma, Advocate,
for the complainant.

N.S. SHEKHAWAT, J.

CRM-35001-2022 in CRM-M-13397-2022

For the reasons mentioned in the application, the same is
allowed. Statement of prosecutrix/victim is taken on record as Annexure
P-6.

CRM-36218-2022 in CRM-M-13397-2022

For the reasons mentioned in the application, the same is
allowed. Statements of prosecutrix/victim and her mother are taken on

record as Annexures P-7 and P-8.

Main case(s)

This order shall dispose of above-mentioned two petitions as both these petitions arise out of the same FIR. For the facility of reference, facts are being taken from CRM-M-28809-2022.

Asha (petitioner in CRM-M-28809-2022) and Ravinderpal Singh (petitioner in CRM-M-13397-2022) pray for grant of bail pending trial in FIR No.246 dated 28.09.2022 under Section 363 IPC (Sections 506, 376(d), 120-B IPC and Sections 6 & 8 of POCSO Act and Sections 3 and 33 of SC & ST Act, 1989 registered at Police Station, Old Faridabad, District Faridabad.

Brief facts of the case are that the FIR in the cases in hand was got registered by 'D', (name has not been mentioned deliberately), wherein it was alleged that her minor daughter (name of the prosecutrix/victim has been withheld in view of the provisions contained in Section 33 of the POCSO Act, Section 228-A of the IPC and in view of the law laid down in the judgment of the Hon'ble Supreme Court in **State of Karnataka Vs Puttaraja, 2004 (1) RCR (Crl.) 113** and has been referred as the 'victim') is aged about 15 years and she left home on 25.09.2020 without informing her and she had searched her everywhere, but she could not know the whereabouts of the victim and consequently, she had come to the police station to lodge the FIR and her daughter may be searched. On the basis of her statement, the FIR was registered by the police under Section 363 IPC on 28.09.2020 and thereafter the investigation formally commenced. On 31.10.2020, the victim was recovered by the police from Plot No.206,

Tower No.2, SRS, Sector-87, Faridabad, which was stated to be on rent with Asha (petitioner in CRM-M-28809-2022). The statement dated 31.10.2020 of the victim was recorded by the police (vide Annexure P-2) in the presence of her mother/complainant as well as the legal aid counsel on the same day. The victim stated that she was unmarried and youngest of five brothers and sisters. Her three sisters were married, whereas her brother was unmarried. Her father had expired 8/10 years back and her mother was working in an export company. Her mother and brother wanted to perform her marriage forcibly and against her wish. Consequently, she left her house on 25.09.2020 without informing anyone and out of her own free will and went to her friend Asha (petitioner in CRM-M-28809-2022) and started residing with her. The victim informed Asha that her mother had gone to Delhi and she wanted to live with her for some time. The victim further stated that no wrong act nor any teasing etc. were committed with her. Even no untoward incident had taken place and she had made the statement voluntarily.

On the same day, i.e. on 31.10.2020, the victim was taken to BKH Hospital, Faridabad for her medical evidence. Again, the victim in her own hand- writing stated that since no wrong act has been committed with her, so she did not want to get her medical examination conducted. The said statement was duly attested by her mother/complainant, lady constable and the doctor, in whose presence the statement was recorded.

Again on 01.11.2020, the statement of the victim was recorded by the Child Welfare Committee, Faridabad vide Annexure P-4. She made a statement before the Committee that her brother is a vagabond and he used

to beat her and her mother and also used to hurl abuses at her. Even her brother was sent to jail in number of cases of theft and he used to bring girls at the room many times and he and his friends used to commit bad acts with the girls in her presence. Even he was made to understand several times but he did not budge. The victim was fed up with this and at about 09.00 AM on 24.09.2020, she left her home and went to her friend petitioner-Asha on foot and started living with her at her home. She stated that during this period, no wrong act was committed with her. Even the said statement (Annexure P-4) was made by the victim in the presence of her mother and it was read over and explained to the victim as well as her mother by the Child Welfare Committee, Faridabad.

Again on 01.11.2020, the statement of the victim was recorded by the learned Judicial Magistrate, 1st Class, Faridabad vide Annexure P-5 and she made statement on similar lines. The victim stated that she left her house on 24.09.2020 when nobody was at home. She went to Asha (petitioner) and told her that her mother had gone to Delhi and Asha should keep her for a period of one month in the absence of her mother and she started living in SRS, Sector-87, Faridabad with Asha Didi. She was staying there since then and nothing wrong had happened with her. Since the victim did not want to return to her home, consequently as per the orders of the court, she was taken to shelter home at Faridabad. Later on, the police investigated the matter and keeping in view the evidence on record, the cancellation report was prepared by the police on 24.11.2020.

Again on 18.12.2020, i.e. after more than 1½ months, the victim appeared before the Child Welfare Committee, Faridabad and stated

that for the last two years, her brother Ishwar had been raping her. Even his friends Rahul, Rinku, Bitu, Lakshman and Sonu also used to have sexual intercourse with her forcibly and this had happened with her since the year 2018 but she did not disclose anything to her mother. At about 09.00 Am on 24.09.2020, she went to the house of Asha and told her everything. Asha assured her that she would help her and would ensure the action against her brother and her friends. On 28.09.2020, Asha left the victim at the house of her brother and Bhabi (sister-in-law). Even Parkash, brother of Asha, also tried to commit bad act with her. At this stage, the name of Ravinderpal Singh (petitioner in CRM-M-13397-2022) was also mentioned. The victim alleged that she was made to take one capsule for two nights, due to which, she used to fall asleep. When she got up in the morning, she did not find any cloth on her body. On her asking, she was informed by Asha that it was hot in the night and the victim had herself removed her clothes due to the same. On the third night, she did not take the capsule and pretended that she was sleeping. However, after some time Rajinder came and he committed bad act with her forcibly. She also stated that Rajinder, Ravinder, Ajit and Asha had prepared her video also during her stay. A copy of the statement dated 18.12.2020 was annexed with the petition as Annexure P-6.

Later on, the victim made another statement (Annexure P-7) on 22.12.2020. The victim stated that her brother Ishwar and his friends namely Rinku, Parkash, Manish, Lakshman, Rahul and Bitu also used to commit bad act with her. Her brother was an anti social element and many cases had been registered against him. As per the victim, she developed friendship with Abdul and she left her home on 24.09.2020 and went to

Asha. However, Asha refused to keep her with herself and asked her to go to Parkash. On the asking of Asha, she went to the house of Parkash and Asha did not accompany her. On that night, Parkash teased her in the night in the presence of his wife and she told all this to Asha. After some time, she went to SRS, Sector-87, Faridabad to live with Asha. On 28.09.2020, Rajinder, Ravinder and Ajit came to Asha and Rajinder and Ajit made her drink with some intoxicating substance. However, she stated that Ravinderpal Singh (petitioner in CRM-M-13397-2022) did not commit any bad act with her. She further stated that Asha used to give her drugs and capsules and even Asha had prepared her nude videos without her knowledge. She stated that she was living in Child Care Centre and wanted to stay there only.

Again on 11.01.2021, the victim again made a statement (P-8) and levelled almost similar allegations. She stated that Rajinder had committed bad act with her and Asha, Rajinder, Ravinder and Ajit had beaten her up and Ravinder had clicked her photos, whereas Asha had prepared her video. However, she did not level any allegation of rape or eve teasing against Ravinder.

After a period of about 01 year, the victim made another statement under Section 161 Cr.P.C. dated 12.09.2021 (Annexure P-9) to the police and alleged that her mother and brother wanted to marry her forcibly against her wish and she went to her friend Asha on 24.09.2020 and started living with her. She alleged that Parkash tried to commit bad act with her. Even Rajinder committed bad act with her, but Ravinder did not commit any bad act with her. It was stated that Asha used to give her drugs etc. and capsules everyday and had video- graphed her nude. Even she levelled

allegations of rape against Ajit and stated that she was living in Child Care Centre since the first day itself.

Learned counsel for petitioner-Asha (in CRM-M-28809-2022) has submitted that from the record, it is apparent that the victim had made 08 different statements and the version given by the victim herself was self contradictory. Neither the complainant nor the victim levelled any allegation against the petitioner in their statements, i.e. FIR (P-1), statement dated 31.10.2020 (P-2), statement before the doctor dated 31.10.2020 (P-3), statement (P-4) made before the Child Welfare Committee, Faridabad, statement made before the learned Judicial Magistrate 1st Class, Faridabad (P-5). Since the victim did not allege anything against the petitioner(s), the police had prepared the cancellation report on 24.11.2020. It has further been argued that now the victim has been examined as PW-1 and her mother, i.e. the complainant has been examined as PW-2 and even their testimonies have been placed on record as Annexures, P-7 and P-8, respectively. Learned counsel for the petitioner has further submitted that in Annexures P-7 and P-8, the victim and her mother further improved their version, which runs contrary to the earlier statements. He has next contended that finding no substance, the cancellation report was prepared by the police on 24.11.2020 and after about 01 month of the cancellation of the case, the complainant/victim improved their version and introduced a concocted story, as per which, the petitioner-Asha had allegedly videographed the victim, when the bad act was committed by others. However, during the course of investigation, the said version has also been found to be false and no video/photographs have been recovered by the

police. Learned counsel for the petitioner-Asha has further argued that the petitioner is a student of LLB (3rd year) and was pursuing her course from Dr. B.R. Ambedkar College, Agra. She was staying in the same house where the victim was living. Later on, the victim became friendly with her and she herself came to the petitioner (Asha) in SRS Society, Faridabad and told her that her mother had gone to the house of her relative for a period of one month and she would like to stay with the petitioner. Thereafter, she has been involved in the instant case with the aid of Section 120-B IPC. Still further, it has been falsely alleged by the victim that the petitioner (Asha) allegedly used to administer her drugs, ganja etc., as no such recovery has been effected from the present petitioner. Further, there is no medical evidence to show that the victim was allegedly provided any such intoxicating substance by the present petitioner. It has further been submitted that the petitioner was arrested in the instant case on 31.03.2022 and being a lady, deserves sympathetic consideration by this Court. He has further contended that the victim and her mother, i.e. the material witnesses of the prosecution, have already been examined and they have further presented an improved version before the Court. He has referred to the testimony of PW-1 (victim) and PW-2 (complainant) extensively and pointed out certain contradictions/discrepancies in their respective testimonies, which have not been reproduced for the sake of the brevity of the matter. Even this Court has refrained from making any comments on the statements of said two witnesses, so that it may not affect the proceedings before the learned trial Court.

Learned counsel for the petitioner-Ravinderpal Singh (in CRM-

M-13397-2022) has submitted that petitioner-Ravinderpal Singh was not named in the FIR either by the complainant or the victim. He has further submitted that his name appeared first time in the statement made by the victim on 18.12.2020 (P-6). Even in the said statement, there were no allegations of rape against the present petitioner and only his presence has been shown at the time, when Rajinder had committed bad act with the victim. It was only alleged against the petitioner that he along with Asha and others had prepared the video of the complainant, but no such video has been recovered during the course of the investigation. He has further submitted that in her statement dated 22.12.2020 (P-7), the victim had clearly stated that the petitioner had not committed any wrong act with her. Even in her statement dated 12.09.2021 (P-9), the victim had clearly stated that the petitioner had not committed any wrong act with her. However, it was only alleged that she was offered an intoxicating substance by Rajinder, Ajit and Ravinder and the petitioner was shown to be present at the place of occurrence by the victim. He further submitted that the petitioner was involved in the instant case after a period of more than 01 year and he was arrested on 01.12.2021 without any incriminating evidence against him. Even no photograph/video has been recovered from him during the course of investigation.

The arguments raised by learned counsel for the petitioners have been vehemently opposed by the learned counsel for the State by submitting that the petitioners had administered slipping pills to the victim and specific and serious allegations have been levelled against both the petitioners. Even the rape was committed on the victim, who is a minor, in

the presence of both the petitioners and they were involved in a ghastly crime. However, learned counsel for the State admitted that there was no medical evidence with regard to administering the pills and no video, allegedly prepared by both the petitioners, was recovered during the course of investigation.

Learned counsel for the complainant also vehemently opposed the grant of bail by alleging that petitioner Asha had taken advantage of her friendship and the victim was subjected to gang rape. Consequently, keeping in view the seriousness of the matter, both the petitioners are not entitled for grant of bail.

This Court has heard the learned counsel for the parties at length and has perused the case file minutely.

It is not in dispute that initially the statement of the victim was recorded by the police after her recovery on 31.10.2020, vide Annexure P-2 and she did not level any allegation against anyone. The said statement of the victim was recorded in the presence of the legal aid counsel and her mother. Similarly, even in BKH Hospital, Faridabd, the victim stated before the doctor that no bad act had been committed with her and she did not want to get her medical examination conducted. Even the statements of the victim was recorded by the member of the Child Welfare Committee, Faridabad in the presence of her mother and no allegation of any offence was levelled against anyone. Even the victim did not level any allegation against anyone, when her statement (P-5) was recorded by the learned Judicial Magistrate 1st Class, Faridabad on 01.11.2020. She levelled serious allegations for the first time on 18.12.2020, i.e. after a period of 01 month

and 18 days of her recovery by the police. Even this Court has perused the various statements made by the victim and her mother at different stages of enquiry, investigation and trial and all the statements are contradictory. Still further, petitioner (Asha) is in custody since 31.03.2022, whereas petitioner (Ravinderpal Singh) is in custody since 01.12.2021. The victim and her mother have already made their statements before the learned trial court and there are no chances of tempering with the prosecution evidence.

No doubt, the allegations levelled by the complainant and the victim are serious in nature, however, the petitioners cannot be detained for an indefinite period as under trial prisoners as the same will be violative of their rights under Article 21 of the Constitution of India. This Court cannot lose sight of the fact that the complainant and the victim have made contradictory statements at different stages and the investigation has been completed and the trial of the case may take long time. Therefore, this Court is of the view that both the petitioners are entitled to grant of bail pending trial on stringent conditions in order to already apprehensions expressed by learned counsel for the complainant.

As a consequence of the above-discussion, both the above-said petitions are allowed. Consequently, it is ordered that both the petitioners, i.e. Asha (petitioner in CRM-M-28809-2022) and Ravinderpal Singh (petitioner in CRM-M-13397-2022) be released on bail pending trial on executing bond with two solvent sureties each in a sum of Rs.25,000/- to the satisfaction of the concerned learned trial Court/CJM/Duty Magistrate subject to the following conditions:-

- (i) That the petitioners shall file their respective affidavits

before the concerned court, disclosing their ordinary places of residence during the pendency of the trial. The petitioners shall also inform the court about the mobile numbers, they are likely to use during the said period. They shall also undertake that they shall not involve in same or similar offence, during the pendency of the trial. In case the petitioners wish to shift their ordinary place of residence, they shall inform at least one week in advance to the concerned court in this regard;

- (ii) The petitioners shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him to disclose such facts to the court or to any authority;
- (iii) The petitioners shall remain present before the court on the dates of hearing of the case. In case, the petitioners want to remain absent, they shall seek prior permission of the court in this regard;
- (iv) The petitioners shall also surrender their passport if any, (if not already surrendered) and in case they are not holders of the same, they shall swear an affidavit to that effect and the said affidavit shall be presented before the concerned court at the time of grant of bail.

It is clarified that the above observations have been made for the limited purpose of grant of bail and nothing stated therein shall be construed as an expression/opinion on the merits of the case.

Both the above-said petitions stand allowed in the above-said terms. Pending application, if any, shall also stand disposed of.

15.11.2022
mks

(N.S. SHEKHAWAT)
JUDGE

Whether Speaking/Reasoned: YES / NO
Whether Reportable: YES / NO