

216 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-29853-2022 (O&M)
Date of Decision: 07.12.2022

MANISH ALIAS MANOJ

... PETITIONER

V/S

STATE OF HARYANA

... RESPONDENT

CORAM: HON'BLE MR. JUSTICE VIVEK PURI

Present: Mr. Vinod Ghai, Senior Advocate with
Ms. Kanika Ahuja, Advocate and
Mr. Nikhil Singh, Advocate for the petitioner.

Mr. Karan Garg, AAG Haryana.

Mr. S. Rai Vaid, Advocate for the complainant.

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VIVEK PURI, J. (ORAL)

CRM-43504-2022

This is an application for placing on record the copy of the order vide which the petitioner along with others have been summoned under Section 319 Cr.P.C., as Annexure P-19.

The same be taken on record, subject to all just exceptions.

Registry is directed to tag the same at the appropriate place.

Disposed of.

Main case

The petitioner is seeking regular bail in case bearing FIR No. 55 dated 30.01.2020 under Sections 365 IPC (328, 343, 366-A, 370, 370-A, 375, 376, 120-B IPC and Sections 6, 17 of Protection of Children from

Sexual Offences Act and Sections 3, 4, 5, 6, 7 of Immoral Trafficking Act added later on), registered at Police Station Thanesar Sadar, District Kurukshetra.

Briefly, the FIR has been registered on the basis of the statement of the father of the victim alleging that the victim is aged about 13 years and she went missing from the house on 27.01.2020 in the evening hours.

Learned Senior counsel for the petitioner contends that the victim went missing from the house on 27.01.2020 and the FIR has been lodged after a delay of 3 days on 30.01.2020. No one has been named in the FIR. The victim was recovered on 19.05.2020. The statement of the victim and that of her father under Section 161 Cr.P.C. was recorded on 19.05.2020 but the petitioner has not been named therein. The supplementary statements of the victim were recorded on 21.05.2020 and 22.05.2020 and even in these statements the name of the petitioner has not been specified by her. For the first time, the name of the petitioner has emerged in the supplementary statement of the father of the victim that has been recorded on 06.08.2020 wherein the allegations have been levelled to the effect that the petitioner along with Davinder @ Bintu and Nikson had kidnapped the victim and committed wrong with her. The petitioner has been nominated as an accused after a lapse of a period of more than 6 months from the registration of the FIR. During the course of investigation, the petitioner was subjected to polygraphy test and also on the basis of call details, he was found innocent. During the course of trial on the application under Section 319 Cr.P.C., the petitioner along with Davinder @ Bintu and Nikson have been summoned to face trial in terms of the order dated

13.07.2021 passed by the learned trial Court. At the earlier instance, the petitioner had moved an application for pre-arrest bail which was allowed in terms of the order dated December 2, 2021. The petitioner had surrendered in the trial Court in pursuance of the interim directions issued in terms of the order dated August 5, 2021 and participated in the trial. However, the order dated 02.12.2021, vide which the petitioner was granted anticipatory bail has been set aside by the Hon'ble Supreme Court of India in terms of the order dated May 06, 2022 passed in Criminal Appeal No. 747 of 2022. It has been further submitted that the statement of the victim was recorded before submission of the application under Section 319 Cr.P.C. in the trial Court. In the said statement, the victim has not specifically and categorically named the petitioner as an assailant. Her statement after the appearance of the petitioner in the Court has also been recorded. In the said statement, there is no specific allegation with regard to commission of rape against the petitioner. The allegations are to the effect that petitioner along with Davinder @ Bintu and Nikson had kidnapped her. However, at the time of identification of the accused, the victim had identified the petitioner and then attributed allegations of commission of rape. However, the details with regard to the allegation of commission of rape have not been specified by her.

Learned State counsel, on instructions from SI Santosh, has opposed the bail application on the score that the petitioner has been specifically named and identified as an assailant who had committed rape upon the victim in her statement recorded during the course of trial. It has also been submitted that in the statement of the victim recorded under Section 161 Cr.P.C. on 06.08.2020, the petitioner has also been nominated

by her. So far statements of 13 out of 56 witnesses have been recorded.

Learned counsel for the complainant has opposed the bail application on the score that the victim was aged about 12 years and 10 months at the time of occurrence. Her father is working as a labourer. She was illegally detained and subjected to prostitution for a long period of 3½ months. It cannot be expected from the victim that she would have remembered the names of each and every person who had sexually abused her during that period of time. The proceedings in the trial Court are going at a fair pace and furthermore, the anticipatory bail application has been declined to the petitioner by the Hon'ble Supreme Court of India. .

At the very outset, it may be mentioned here that the parameters for grant of anticipatory bail and regular bail are distinct and different. The anticipatory bail can be granted to an accused in the event extra-ordinary and exceptional circumstances are made out. Even the perusal of the order of the Hon'ble Supreme Court dated May 6, 2022 indicates that the directions were issued to the petitioner to surrender before the trial Court within a period of 10 days and it will be open to him to apply for regular bail before the trial Court and in case, any such application is filed, the same would be considered on its own merits, without being influenced by any observation in the order. It has been further observed that any such application for bail would be decided expeditiously.

It is significant to note that the petitioner has been summoned during the course of trial on an application under Section 319 Cr.P.C. During the course of investigation, he was declared innocent on the basis of polygraphy test and the call details. The name of the petitioner has emerged for the first time in the supplementary statement of the victim and her father

that has been recorded on 06.08.2020. However, it has not been specified as to under what circumstances and in what manner, the victim and her father came to know about the name of the petitioner as an assailant/accused. The victim has not specifically named the petitioner in her initial statement that was recorded in the trial Court before the summoning of the petitioner under Section 319 Cr.P.C. However, the petitioner has been mentioned as friend of Davinder. Even in her statement that has been recorded subsequent to the summoning under Section 319 Cr.P.C., the allegation attributed to the petitioner is to the effect that the petitioner along with co-accused namely Bintu and Nikson pressed her mouth, put her in a car and took her to a liquor shop near village Jhirbar. In the said statement, the allegations of commission of rape have been attributed against Nikson and Bintu. However, no specific instance of commission of rape has been attributed against the petitioner. It may be true that at the time of identification of the accused, the victim has identified the petitioner and further stated that he also committed rape with her but no specific instance has been reflected by her in her statement. The petitioner is in custody for a period of 6 months and 25 days and is not involved in any other case. So far statement of 13 out of 56 witnesses have been recorded. The statement of the victim has also been recorded during the course of trial.

Keeping in view the mitigating circumstances appearing against the petitioner and the fact that the conclusion of trial is likely to take more time, sufficient grounds are made out to extend the concession of bail to the petitioner. Therefore, without making any expression of opinion on the merits of the case, it is ordered that the petitioner be released on regular

bail subject to his furnishing fresh bail bonds/surety bonds to the satisfaction of the concerned trial Court/Chief Judicial Magistrate/Duty Magistrate.

The petition is allowed.

07.12.2022

Janki

(VIVEK PURI)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No