

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

1. CRM-M-29903-2020
- SandeepPetitioner
- Versus
- The State of HaryanaRespondent
2. CRM-M-30196-2020
- Anjali @ Anjala @ SanjanaPetitioner
- Versus
- State of Haryana Respondent
3. CRM-M-37821-2020
- PushpinderPetitioner
- Versus
- State of HaryanaRespondent

Date of decision: 4.11.2022

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present :- Mr. Raj Kapoor Malik, Advocate,
Mr. Sahil Parmar, Advocate and
Mr. Lupil Gupta, Advocate
for the petitioner(s).

Mr. B.S. Virk, DAG, Haryana.

RAJESH BHARDWAJ, J.

This order shall dispose of above-said three petitions arising out of the same FIR bearing No.553 dated 25.12.2019, under Sections 363, 366-A of IPC (Sections 328, 365, 370-A, 372, 373, 376, 120-B of IPC; Section 6 of POCSO Act and Sections 4, 5, 6 of Immoral Traffic

(Prevention) Act have been added during the investigation and at the time of filing the final report), registered at Police Station City Kaithal, District Kaithal by passing common order.

As per the facts of the case, the present FIR was lodged by father of the victim (name of both victim and her father concealed). It was alleged that he had six daughters and one son. His daughter (hereinafter referred to as 'victim') was aged about 16 years. After having studied upto 9th standard, she used to remain at home. On 20.11.2019 at about 2:00 PM in the day time, she left the home without informing anyone. They searched her in all their relations but did not get any clue about her. It was suspected that some unknown persons had enticed her away on the pretext of performing marriage. Request was made to take legal action against the unknown persons. On lodging of the FIR, the investigation commenced. During investigation, the victim was recovered on 29.04.2020 from Ganganagar, Rajasthan. She was produced before the learned Chief Judicial Magistrate on 02.05.2020 and her statement was recorded under Section 164 Cr.P.C. and thereafter, she was produced before the District Child Welfare Committee, Kaithal on 04.05.2020. The investigating agency got her medically examined. On 15.07.2020, supplementary statement of the victim was recorded by the investigating agency under Section 161 Cr.P.C. as well. On the basis of the statement of the victim, the accused-petitioners were arrested by the investigating agencies. Petitioner-Sandeep was arrested on 01.08.2020, petitioner-Anjali @ Anjala @ Sanjana was arrested on 21.05.2020 and petitioner-Pushpinder was arrested on 28.07.2020. The petitioners approached the Court of learned Additional Sessions Judge, Special Court, Kaithal

praying for grant of bail. However, after hearing counsel for the parties, learned Additional Sessions Judge, Special Court, Kaithal has declined the bail of petitioner-Sandeep on 07.09.2020, petitioner-Pushpinder on 02.11.2020 and petitioner-Anjali on 11.09.2020.

Learned counsel for the petitioner in CRM-M-29903-2020 has submitted that petitioner-Sandeep has been falsely implicated in this case. He submits that the FIR has been lodged after a delay of 35 days. He has submitted that the allegations against the petitioner pertaining to his involvement in the conspiracy along with co-accused have been made in a deliberated manner. He submits that the statement of the victim was recorded under Section 164 Cr.P.C. and thereafter, supplementary statement was recorded under Section 161 Cr.P.C. wherein the complicity of the petitioner was alleged by the victim after having been tutored. He submits that the petitioner was arrested and during custody, his disclosure statement was recorded by adopting coercive method and thus, he was made involved in this case. He further submits that the parents of the victim have been examined by the trial Court and both have not supported the case of the prosecution and thus, have been declared hostile. The case of the prosecution is not even medically corroborated as in the FSL report, no semen was detected. He submits that the petitioner is behind bars since 07.09.2020, and thus, deserves to be granted bail.

Learned counsel for the petitioner in CRM-M-30196-2020 submits that petitioner-Anjali has been falsely implicated in this case. He submits that the FIR has been lodged after a delay of 35 days. He has submitted that the allegations against the petitioner pertaining to her involvement in the conspiracy along with co-accused have been made in a

deliberated manner. He further submits that a careful perusal of the statement of the victim and that of her father would reveal that the petitioner has been falsely implicated in this case. He has submitted that the victim has stated in her statement under Section 164 Cr.P.C. that she left her home on 19.11.2019 whereas, her father had stated that she left the home on 20.11.2019. He further submits that the victim did not allege that petitioner got her indulged in flesh trading. He submits that there are material contradictions in the statements given by the victim at different stages and hence, her statement lacks credibility. He further submits that there is no credible evidence collected by the investigating agencies regarding the date of birth of the victim and hence, the charging the accused for the offence under the POCSO Act is also not made out. He further submits that the victim was compelled by her parents to involve the accused in order to extract money from them. He further submits that the victim has already filed an affidavit dated 16.09.2020 wherein she has deposed that she had filed a false complaint against all the accused under the pressure of her parents. He further submits that the parents of the prosecutrix have been examined by the trial Court and both have not supported the case of the prosecution and thus, have been declared hostile. Petitioner is in custody since 11.09.2020 and thus, deserves to be granted bail.

Learned counsel for the petitioner in CRM-M-37821-2020 has submitted that petitioner-Pushpinder has been falsely implicated in this case. He submits that the FIR has been lodged after a delay of 35 days. He has submitted that the allegations pertaining to involvement of the petitioner in the conspiracy along with co-accused against the

petitioner have been made in a deliberate manner. Besides this, he submits that petitioner is a young boy of 21 years who has no role whatsoever in the allegations made. He further submits that the victim has already filed an affidavit dated 16.09.2020 wherein she has deposed that she had filed a false complaint against all the accused under the pressure of her parents. He submits that the petitioner is behind bars since 28.07.2020 and thus, deserves to be granted bail.

It is submitted that the victim has died after lodging of the FIR. The victim was married by her parents and she died thereafter due to heart attack. They submit that the same has been investigated by the investigating agencies and it was found that she died of heart attack and there was no foul play by the petitioners in the death of the victim.

Learned State counsel has vehemently opposed the submissions made by counsel for the petitioners. He submits that the victim was minor being hardly 16 years of age and she had been ravished by the petitioners and co-accused. He has drawn the attention of this Court to the status report filed by way of affidavit of Mr. Vivek Chaudhary, HPS, Deputy Superintendent of Police, (AEC) Kaithal, District Kaithal dated 06.05.2022 and the status report by way of affidavit of Mr. Ravinder Sangwan, HPS, Deputy Superintendent of Police, Kaithal, District Kaithal dated 20.08.2022. He submits that the petitioners have committed a very serious and heinous offence against the minor. He submits that the FIR was lodged on the statement of father of the victim, on the basis of which, the investigation commenced. The victim was recovered from Ganganagar, Rajasthan on 29.04.2020. He has submitted that after her recovery, she was produced before learned Chief Judicial

Magistrate for recording her statement under Section 164 Cr.P.C. and District Child Welfare Committee and was medically examined. He submits that on perusal of the statement of the victim recorded under Section 164 Cr.P.C. dated 02.05.2020 it would reveal that the victim used to call petitioner Anjali as Bhabi. Anjali served her water and she became unconscious and thus, she was taken to Ganganagar, Rajasthan where she was introduced to one Preeti. The petitioner thus, in collusion with Preeti, thrown the victim in the business of flesh trade. She used to be sent to different persons who used to rape her day and night. She deposed that it became a routine that people used to come over there and her modesty used to be outraged during day as well as in the night hours. She learnt from Preeti that she was purchased from her *bhabhi* for Rs.5,00,000/- and she was to be further sold. Thereafter, she was rescued by one Heena and thus, she could reach the police. He has further argued that the statement of the victim was further recorded on 15.07.2020 under Section 161 Cr.P.C. wherein she deposed that her parents used to give her beatings and there used to be exchange of hot words between her and the parents. Then she left her home and went to her friend Anjali who thrown her in the business of prostitution. She stated that her modesty was outraged by various persons namely, Rahul Walia, one Sikh gentleman, having Tyre Showroom and one Pushpinder (petitioner). She deposed that she knew Pushpinder very well. She also deposed that she had conversation with Pushpinder on 21.02.2019 and the last conversation with him was in September, 2019. He further argued that the victim stated that rape was committed with her in Welcome Hotel and Preeti brought her to Ganganagar in a Bus. On asking by Anjali, she was kept in a parlour by

Preeti where Pushpinder and Sandeep (petitioners) kept her in Safa Centre, Ellenabad by hatching criminal conspiracy. She also deposed that she could demarcate the parlour situated at Ellenabad. She further stated that she stayed at Ellenabad for about 1 ½ months where Preeti used to sent her to fresh customers. She stated that she knew the person belonging to parlour whose name was Sandeep (petitioner).

Learned State counsel has submitted that after investigation, the challan has been presented against four accused and out of 26 prosecution witnesses, 12 witnesses already stood examined. He submits that during the pendency of the trial, the victim has died. He further submits that in pursuance to the order passed by this Court, the circumstances regarding her death were ascertained and the status report by way of affidavit dated 20.08.2022 has been filed. He submits that the cause of her death was enquired into by the investigating officer who visited Village Kharkada, Tehsil Barwala, District Hisar where the victim was married. The statement of the residents of village were recorded and it was found that nobody played any foul play in her death, which took place on 03.10.2021. He submits that as per inquiry, it was found that she died of some serious illness or heart attack. He has submitted that the petitioners are involved in a very heinous offence and granting them bail would prejudice the ongoing trial.

I have heard counsel for the parties and perused the records.

Needless to say that the petitioners are facing the charges which are very grave in nature. The victim was hardly 16 years of age. The investigating agencies have collected the record from the school where she studied and found her date of birth as 21.07.2003. Accordingly,

the victim was found to be less than 18 years. She was recovered by the investigating agencies from Ganganagar, Rajasthan. The statements of the victim were recorded under Section 164 Cr.P.C. as well as under Section 161 Cr.P.C. She had given the vivid account of complicity of the petitioners. As per deposition of the victim, the petitioners played an active role in putting the minor victim in the business of prostitution. The case of the prosecution has already suffered a serious set back when it is found that the victim has died in mysterious circumstances on 03.10.2021 and thus, she is no more. The fact that parents of the victim have not supported the case of the prosecution is in itself not sufficient enough to ignore the overall facts and circumstances of the case. The prosecution could examine 12 witnesses out of total 26 witnesses as on date. Perusal of the record would show that the investigating agencies had also stated during the pendency of bail petitions of the petitioners that they would examine the role of other co-accused also, who are named by the victim in her statement. It was submitted before the Court that though report under Section 173 Cr.P.C. is already filed but on the examination of the allegations of the victim *qua* rest of the accused, if need arises the challan under Section 173 (8) would be presented. Though counsel for the petitioners have contended that the petitioners are behind bars from the last more than two years but the custody period alone is not enough for granting them bail. The petitioners have strongly relied upon the affidavit given by the deceased victim and the deposition of her parents wherein they have been declared hostile. *Prima facie* this Court cannot ignore the fact that there is a strong probability of tampering with the prosecution evidence in the eventuality of the bail granted to the petitioners.

Keeping in view the gravity of the offence allegedly committed by the petitioners with the victim who is no more as on date, this Court is of the opinion that granting bail to the petitioners would seriously prejudice the ongoing trial. This Court do not find any merits in the petition filed. Resultantly, the same are dismissed. The Court cannot be oblivious of the fact that the petitioners are behind bars from the last more than 02 years and hence, learned trial Court is requested to expedite the trial. Nothing said herein shall be treated as an expression of opinion on the merits of the case.

4.11.2022
m. sharma

(RAJESH BHARDWAJ)
JUDGE

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