

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

Sr. No.: 214

Criminal Miscellaneous No.M-5614 of 2023

Date of Decision: February 08, 2023

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..... PETITIONER(S)

VERSUS

State of Haryana

..... RESPONDENT(S)

. . .

CORAM: **HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA**

. . .

PRESENT: - Mr. S.S. Gill, Advocate for the petitioner.

Ms. Mahima Yashpal, Deputy Advocate General,
Haryana.

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Tribhuvan Dahiya, J (Oral)

This is a petition under Section 439 Cr.P.C. seeking regular bail to the petitioner in case FIR No.31 dated 07.03.2022 under Sections 346 IPC (Sections 363, 366-A, 376(2)(n), 376-D and 506 IPC and Section 6 of the POCSO Act, 2012 added later on), registered at Police Station Baragudha District Sirsa.

The FIR was lodged on the statement of victim's mother alleging that her younger daughter was found missing from home on 27.02.2022. Despite making best efforts, she could not be found. Request was made to the police to find her daughter.

Learned counsel for the petitioner has contended that the complainant's daughter, aged about 17 years at the time of alleged incident, was recovered from a *jhuggi*/hut at village Mohranwali, Tehsil Pokhran, District Jaisalmer, on 09.04.2022. Her statement under Section 164 Cr.P.C.

was recorded on 11.04.2022 wherein she did not implicate the petitioner, and her medical examination was also conducted. After investigation the police prepared a cancellation report on 14.04.2022. About four months thereafter, on 05.08.2022, the SHO, Police Station Badagudha, Sirsa, moved an application to the Superintendent of Police for re-opening the matter as a crime against the complainant's daughter was stated to have been committed. Thereupon, the victim's statement under Section 161 Cr.P.C. was recorded by the police on 06.08.2022, wherein she named the petitioner alleging that she was taken away by him along with another boy to Jaisalmer, where they stayed together for forty days. There, the co-accused allegedly, forcibly committed bad act with her four-five times. Her medical examination was also conducted on 06.08.2022, wherein it is recorded that no injury was found upon her person. On 14.08.2022, another statement of the victim was recorded by the police under Section 161 Cr.P.C., wherein she again changed her version and stated that on the night of incident, i.e., 27.02.2022, she had gone to railway station without telling anything to anybody at home. Two boys met her there and took her to Mohranwali, Pokhran, District Jaisalmer. One of them, i.e., the co-accused, committed bad act during her forty days stay there.

Learned counsel further submits that in the light of these facts, it cannot be said that the petitioner enticed her away. There is no allegation of rape against him. The allegations are false on the face of it and cannot be believed, especially in the light of changing versions of the victim herself. Besides, on similar allegations the co-accused Vijay has already been admitted to bail by this Court vide order dated 02.02.2023.

Learned State counsel, on instructions from ASI Pardeep Kumar, submits that the trial is yet to commence, and the petitioner,

therefore, should not be admitted to bail. She, however, is not in a position to dispute the facts submitted by learned counsel for the petitioner. The petitioner is in custody since 06.09.2022 and twenty three prosecution witnesses are to be examined.

Keeping in view the aforementioned facts, as also that trial of the case is not likely to conclude in near future as all the prosecution witnesses still remain to be examined, and investigation of the case is already over, no purpose will be served by keeping the petitioner in jail during trial.

Accordingly, the present petition is allowed. The petitioner is ordered to be released on bail on his furnishing bail/surety bonds to the satisfaction of the trial Court/Duty Magistrate.

(Tribhuvan Dahiya)
Judge

February 08, 2023
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Whether Speaking/ Reasoned:
Whether Reportable:

Yes/ No
Yes/ No