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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-9662-2023 (O&M)
Date of decision : 10.10.2023

Afzal Khan

... Petitioner(s)

Versus

State of Haryana

... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Varun Sharma, Advocate for the petitioner.

Ms. Priyanka Sadar, AAG Haryana.

ALKA SARIN, J. (ORAL)

1. The present petition has been filed under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail to the petitioner in FIR No.339 dated 15.09.2021 under Sections 363 of the Indian Penal Code, 1860 (Sections 363, 328, 376 and 506 IPC and Section 4 of Protection of Children from Sexual Offences Act, 2012 added later on) registered at Police Station Hodal, District Palwal (Annexure P-1).

2. Brief facts relevant to the present case are that the complainant gave a complaint to the Police on 15.09.2021 that his younger daughter had been missing since 14.09.2021 night. On the basis of the said complaint, an FIR was registered under Section 363 IPC. The daughter of the complainant, who is 15 years of age, was recovered by the Police on 16.09.2021 from Muzaffarnagar (UP). It is apt to notice that the complainant is a resident of

Palwal, Haryana. The minor child, after being recovered on 16.09.2021, was taken for her medical examination to Civil Hospital, Palwal on 17.09.2021. The doctor after examining her opined that *“possibility of sexual activity cannot be ruled out on the basis of the examination. It further can be ruled out on the basis of supplied swab cloths and blood samples”*. The samples went sent for FSL and DNA testing. The statement of the minor was recorded under Section 164 CrPC on 17.09.2021 wherein she stated that on account of her being unconscious she did not know whether any wrong act had taken place with her. Subsequently, Sections 328, 376, 506 IPC and Section 4 of POCSO Act were added. The petitioner was arrested on 19.09.2021

3. Learned counsel for the petitioner has contended that the petitioner has falsely been implicated in the present case as he was working as a painter in the house of the complainant and an amount of Rs.1,00,000/- was due towards him as payment for work carried out by him. When he demanded the money, the present case was planted upon him. It is further the contention of learned counsel that the petitioner has been in custody for a period of 01 year 09 months and 14 days.

4. Status report has been filed by way of affidavit of Sajjan Singh, HPS, Deputy Superintendent of Police, Palwal, District Palwal on behalf of the respondent-State. Alongwith the said status report, the statement of the victim recorded under Section 164 CrPC has also been appended wherein she has stated that painters had come to her house and the petitioner, who

had also come to the house to paint, had started making gestures at her. He also told her that he has a car and bungalow etc. and that he would keep her happy. He gave his mobile number to her. The minor is stated to have called the petitioner herein. However, after some days she stopped talking to him. The petitioner is stated to have told her that he was divorcing his wife and that he was coming to take her. When she refused, he threatened to kill her family. He thereafter took her on 14.09.2021 to Muzaffarnagar. It was further stated that on the next day he brought some food for her and she lost her senses and became unconscious and she did not know what he did with her. She was tested in the Government hospital. Learned counsel for the State has also today placed on record a photocopy of the DNA Report which has been received electronically by her from Dr. Rajeev Kawatra, Assistant Director (DNA), Forensic Science Laboratory, Madhuban (Karnal) wherein it has been stated that samples of the victim have matched with the DNA profile of the petitioner.

5. Heard.

6. In the present case serious allegations have been made against the petitioner who had gone to paint the house of the complainant. He is alleged to have lured the minor daughter of the complainant and thereafter took her to Muzaffarnagar where he is alleged to have fed her something and due to which she lost her consciousness. The victim in her statement recorded under Section 164 CrPC has stated that due to losing her consciousness, she did not remember what happened with her.

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Subsequently, she was recovered on 16.09.2021 from Muzaffarnagar and her medical was conducted on 17.09.2021. The DNA Report has since been received and as per the DNA Report the DNA profile on the source of item No.2A i.e. glass slides and item No.5 i.e. underwear of the victim has matched with the DNA profile of item No.6 i.e. blood sample of the petitioner.

8. In view of the above, I do not deem this to be a fit case for grant of regular bail to the petitioner. The present petition is accordingly dismissed. Pending applications, if any, also stand disposed off.

9. It is made clear that any observation made herein shall not be treated as an expression of opinion on the merits of the case.

10.10.2023

Yogesh Sharma

(ALKA SARIN)

JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO