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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Date of decision: October 16, 2023

Poonam @ Gaytri

....Petitioner

versus

State of Haryana and another

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:-** Mr. Govind Chauhan, Advocate for petitioner.

Mr. Gurmeet Singh, AAG Haryana.

None for respondent No.2.

ARUN MONGA, J. (ORAL)

Following the denial of bail by the learned trial Court, the petitioner is now before this Court seeking her release as an undertrial in a case FIR No.147 dated 25.06.2021, registered under Sections 363, 366-A, 376-AB, 114 of the Indian Penal Code, 1860 (hereinafter referred to as 'IPC') and Section 6 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as 'POCSO Act'), at the Munak Police Station, in Karnal.

2. According to the prosecution's account, the complainant alleged that on June 24, 2021, he and his wife had gone to work. When they returned in the evening, their son informed them that one Raju, also known as Swaran Kumar Singh, and his wife Poonam (the petitioner) had visited their house around 10:00 a.m. and enticed away their daughter, who had not returned since. The complainant and his wife attempted to contact the accused, Raju, on both of his mobile numbers, but both were switched off. They tried to contact Raju's relatives but could not determine his daughter's whereabouts. As a result, an FIR was registered. During the investigation, the petitioner was arrested and has been in custody since July 09, 2021.

3. The petitioner's counsel contends that she was not present at the location of the incident when it occurred. Instead, she argues that she has been unfairly made a

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scapegoat to tarnish her reputation in society. Even the statement of the prosecutrix herself indicates that the co-accused, Raju, had ill intentions towards her and eventually sent her to her parental house in Bihar. The petitioner, as the wife of the co-accused, has been needlessly implicated in this case without any direct evidence against her. This appears to be an attempt to exert pressure and extort money through a settlement. The petitioner has, therefore, been falsely accused in this case.

3.1. Finally, it is submitted that there is nothing to recover from the petitioner, and she is not required for further custodial interrogation. There is no likelihood of the petitioner tampering with evidence or influencing prosecution witnesses, and she is not involved in any other case.

4. On the contrary, learned State counsel strenuously opposes the petition, expressing concerns about possibility of the petitioner fleeing from trial proceedings if granted bail. Also argues that the petitioner has committed a serious offense. He however, admits that petitioner is not involved in any other case.

5. I have heard the rival arguments and reviewed the case file.

6. In response to a query from the Court, under instructions from ASI Rajiv Kumar, learned State counsel informs that the challan has already been filed and charges were framed on November 01, 2021. Thus, the investigation regarding the petitioner is complete, and she is not required for custodial interrogation.

7. At this stage, the allegations against the petitioner are subject to trial. The trial's progress has been slow, and it is anticipated to take a considerable amount of time. Of the twenty witnesses, thirteen have been examined so far and one has given up. Bail serves the purpose of allowing an accused to remain free until their guilt or innocence is determined. In contrast, the petitioner has been in detention since July 09, 2021, for more than 02 years and 03 months.

8. The petitioner's continued preventive custody is based on an unsubstantiated suspicion that she might tamper with evidence or influence witnesses. There is no probability of tampering with evidence as it has already been seized by the investigating agency.

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9. The petitioner is stated to be a 27-year-old married woman having tender aged children and deprived of love, affection and care by their mother, so imperative at this stage of their upbringing/growing up. Being family woman and having a fixed abode and clean antecedents, it is unlikely that she poses any flight risk and/or will flee from trial proceedings.
10. Considering the overall scenario, without commenting on the merits of the case, the instant petition is allowed. I am of the view that no useful purpose would be served by keeping the petitioner in further preventive custody.
11. Accordingly, the petitioner is ordered to be released on bail upon furnishing bail bonds and surety bonds to the satisfaction of the learned trial Court, where her case is being tried, and in case he/she is not available, before the learned Duty Judge, as the case may be.
12. In case the petitioner is found involved or gets involved in any offense while on bail, the prosecution shall be at liberty to seek the cancellation of her bail in the instant case.
13. It is made clear that any observations and/or submissions noted hereinabove shall not have any effect on the merits of the case, as they are for the limited purpose of the bail hearing alone, and the learned trial Court shall proceed without being influenced by this order.
14. Pending applications, if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

October 16, 2023

mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No