

**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

104+208

CRM-M-18916-2023 (O&M)
Date of decision: 04.12.2023

Mohit

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Yashveer Kharb, Advocate
for the applicant-petitioner.

Mr. Arjun Lakhanpal, Addl. A.G., Haryana.

MANISHA BATRA, J. (Oral)

1. CRM-41209-2023

Allowed as prayed for.

Documents are taken on record as Annexures P-7 to P-9.

2. CRM-M-18916-2023 (O&M)

This petition has been filed by the petitioner under Section 439 Cr.P.C. seeking regular bail in case bearing FIR No. 379 dated 08.07.2022, registered under Section 346 IPC (summoned to face trial under Sections 363, 366-A, 370 of the IPC and Section 6 read with Section 16 of the POCSO Act, 2012) at Police Station Sonipat City, District Sonipat.

Neutral Citation No. 2023:PHHC: 154640

2. Brief facts of the case relevant for the purpose of disposal of this petition are that the aforementioned FIR was registered on the basis of a complaint submitted by the complainant 'A' (*name withheld*) therein that his niece 'R' (*name withheld*), who had been staying with him had gone to bring some goods from the shop on 06.07.2022 at about 06:00 P.M. and did not come back. He made request for searching for her. Initially, FIR was registered under Section 346 IPC. Investigation proceedings were initiated. The victim was recovered on 19.07.2022. her counseling was conducted by the Child Welfare Committee, Rohtak. Her statement under Section 164 Cr.P.C. was recorded in the Court of Illaqua Magistrate, wherein she disclosed that on the fateful day, she was forced by the petitioner, who was already known to her, to sit in a vehicle, wherein co-accused Umesh was also present. They had taken her to bus stand and thereafter, accused Umesh had taken her to his house, wherein rape was committed upon her by him. Accused Umesh had also taken her to Rohtak and had left her at the house of his uncle and subsequently, she was taken to Bal Gram, Rohtak by an advocate engaged by accused Umesh. She prayed for taking penal action against the culprits. After completion of necessary investigation and usual formalities, *challan* under Section 173 Cr.P.C. was presented in Court only against accused Umesh and the present petitioner was found innocent. Medico-legal examination of the victim was conducted. Accused Umesh was arrested on 16.08.2022. During trial of the case, an application under Section 319 Cr.P.C. was filed by the prosecution for summoning the present petitioner as an additional accused. The said application was allowed, vide order dated 27.02.2023 and the present petitioner was ordered to be summoned as an additional accused to face trial

Neutral Citation No. 2023:PHHC: 154640

along with accused Umesh. The petitioner is in custody since 24.03.2023. He had moved an application for grant of regular bail before the trial Court but the same was dismissed, vide order dated 29.03.2023.

3. The present petition has been filed by the petitioner on the ground and his counsel has argued that he has been falsely implicated in this case. He was found to be innocent by the Investigating Agency, which had conducted thorough investigation in the matter. His custodial interrogation is not required. The allegations of commission of offence of aggravated penetrative sexual assault are not against him. His involvement in the kidnapping/abduction or alleged trafficking of the victim had also not been made out. Co-accused Umesh has since been extended benefit of bail by the trial Court, vide order dated 10.01.2023. Hence, it is prayed that the present petition deserves to be allowed.

4. *Per contra*, learned State counsel has argued that there are serious allegations against the petitioner. There will be no undue delay in conclusion of trial. Therefore, he has argued that the present petition is liable to be dismissed.

5. I have heard learned counsel for the parties and have also gone through the material placed on record very carefully.

6. The petitioner along with co-accused Umesh is alleged to have induced the victim to go with them and is further alleged to have facilitated the offence of rape committed upon her. He was summoned in this case in pursuance of allowing of an application filed by the prosecution under Section 319 Cr.P.C. during trial. The victim has supported the prosecution version in her sworn deposition, which was recorded before the trial Court. However,

Neutral Citation No. 2023:PHHC: 154640

after arrest and prosecution of the present petitioner, when her statement was recorded, she did not implicate him in the subject crime at all, rather, stated she could not identify him. Copy of her sworn deposition dated 09.08.2023 has been placed on record, which shows that she had been declared hostile and was allowed to be cross-examined by the Public Prosecutor but she did not support the prosecution’s case. The copies of statements of other material witnesses, namely mother and maternal uncle of the victim, have also been placed on record, who too are not shown to have implicated the petitioner in this case. Co-accused Umesh, against whom even graver allegations had been leveled by the victim, has since been extended benefit of regular bail by the trial Court. The petitioner is custody since 24.03.2023. Keeping in view the circumstances emanating from the record, I am of the considered opinion that no useful purpose would be served by keeping him in custody anymore.

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

8. It is made clear that any observation made herein above is only for the purpose of deciding the present petition and the same shall have no bearing on the merits of the case.

04.12.2023

Waseem Ansari

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No