

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

218

CRM-M-19771-2023 (O&M)

Date of Decision : 12.12.2023

GURPREET SINGH

.... Petitioner

VERSUS

STATE OF PUNJAB

.... Respondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Ashok Giri, Advocate for the petitioner.

Mr. Harjinder Singh Sidhu, AAG Punjab.

Mr. Barjinder Singh, Advocate for the complainant.

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.40 dated 28.02.2022 under Sections 363, 366 and Sections 366-A, 376 (added later on) of the Indian Penal Code, 1860 registered at Police Station Sultanpur Lodhi, District Kapurthala.

2. On 22.05.2023 the following order was passed :

"The petitioner is relying upon mobile conversation which took place between him and prosecutrix on the alleged date of incident. As per the said conversation, it was the prosecutrix who left her home and compelled the petitioner to meet her. Thus, all the allegations of the prosecutrix are false.

Learned counsel for the petitioner submits that police report under Section 173 Cr.P.C was filed on 11.05.2022. There is allegation of commission of offence punishable under Section 376 IPC which is triable by Sessions Court. The petitioner is confined at Central Jail, Kapurthala and Jail Authorities are not producing him before the Magistrate, resultantly, trial is pending at committal stage for last one year.

Learned State counsel is directed to verify authenticity of mobile conversation (Annexure P-2).

Adjourned to 18.07.2023.

Superintendent, Central Jail, Kapurthala is hereby directed to produce the petitioner before Magistrate on 30.05.2023 i.e. next date fixed before Magistrate.

It is made clear that if petitioner on whatsoever account is not produced before the Magistrate on 30.05.2023, the Superintendent, Central Jail, Kapurthala would be proceeded under Contempt of Court Act."

Subsequently, the State sought time to verify the authenticity of the mobile conversation (Annexure P-2).

3. Learned counsel for the State has stated that the authenticity of the mobile conversation (Annexure P-2) cannot be ascertained as the prosecutrix has not appeared for getting her statement recorded and she is not even coming forward to give her voice samples.

4. Learned counsel for the petitioner would contend that the present is a case of a love affair having gone sour. The prosecutrix had left with the petitioner on 26.02.2022, however, the FIR was lodged on 28.02.2022 alleging therein that the daughter of the complainant (prosecutrix) had been kidnapped. In the FIR the petitioner was specifically named. The prosecutrix returned on 05.03.2022 and on 09.03.2022 she went to get her medical conducted. The history given in the medical was that some unknown persons with muffled faces had taken her away and thereafter one of the said persons had committed rape upon her. In her statement recorded under Section 164 CrPC on 11.03.2022, the prosecutrix had named the petitioner being the person who had committed rape upon her. Learned counsel would further contend that the co-accused, namely, Rajwinder Singh and Rameshwar Singh, have since been granted the concession of bail. It is further the contention of the learned counsel for the petitioner that the charges were framed on 19.07.2023 and since then the case is being adjourned repeatedly as the prosecutrix is not coming forward to get her statement recorded. Learned counsel has pointed out to the order dated 09.11.2023 wherein a statement was made by the learned counsel for the State, on instructions from HC Bakshish Singh, who had informed the Court that the Trial Court had directed the SHO concerned to bring the prosecutrix to the Court on the next date of hearing for recording of her statement. Learned counsel would further contend that despite the said orders, the complainant did not appear on 08.11.2023 or thereafter on 01.12.2023 and 08.12.2023. Learned counsel for the petitioner has relied

upon the orders passed by Coordinate Benches of this Court in *CRM-M-27402-2021* titled as '*Mujammil vs State of Haryana*' decided on 15.02.2022 and in *CRM-M-43332-2020* titled as '*Kamal vs State of Haryana*' decided on 08.02.2021, to contend that where the trial is being delayed by the prosecutrix intentionally by not appearing and by not getting her statement recorded, the same would be a fit case for grant of regular bail to the accused. The petitioner has been in custody for a period of 1 year 7 months and 13 days.

5. Learned counsel for the State has filed the custody certificate and as per the custody certificate, the petitioner has been in custody for a period of 1 year 7 months and 13 days. There is one more case pending against the petitioner. Learned counsel for the State is not in a position to deny the fact that the prosecutrix is not appearing before the Trial Court for her examination and for getting her statement recorded despite numerous opportunities having been granted.

6. Heard.

7. In the present case the prosecutrix went missing on 26.02.2022 and on 28.02.2022 on the statement of the mother of the prosecutrix the FIR was lodged alleging therein that the petitioner along with his some friends had kidnapped her daughter. The prosecutrix returned on 05.03.2022 and on 09.03.2022 she went for her medical examination. In her medical, the history given by the prosecutrix was that some unknown persons with muffled faces had picked her up and thereafter one of the said persons had committed rape upon her. In her statement recorded under Section 164 CrPC on 11.03.2022

the prosecutrix named the present petitioner. Co-accused of the petitioner, namely, Rajwinder Singh and Rameshwar Singh, have since been granted the concession of bail. The petitioner has been in custody for a period of 1 year 7 months and 13 days. The prosecutrix despite numerous opportunities having being given and despite being duly served for the said dates is not appearing before the Trial Court. Thus, it can be presumed that the prosecutrix is intentionally delaying the trial. The trial is likely to take some time to conclude and no useful purpose would be served by keeping the petitioner behind the bars any further.

8. In view of the above and without commenting upon the merits of the case, this Court deems it to be a fit case to grant the concession of regular bail to the petitioner. The petitioner is directed to be released on bail subject to his furnishing bail bonds/surety bonds to the satisfaction of the Trial Court/Additional Sessions Judge (Duty) concerned, if not required in any other case.

9. However, the Prosecution will always be at liberty to apply for cancellation of bail in case the petitioner is found to be misusing the concession of bail in any manner.

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

11. Disposed off. Pending applications, if any, also stand disposed off.

12.12.2023
Aman Jain

(ALKA SARIN)
JUDGE

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