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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-20719-2023 (O&M)
Date of decision : 21.12.2023

Kamaljeet ... Petitioner(s)

Versus

State of Haryana ... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Kamal Mor, Advocate for the petitioner.

Ms. Mayuri Lakhanpal Kalia, DAG Haryana.

ALKA SARIN, J. (ORAL)

1. This is a petition under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail to the petitioner in FIR No.119 dated 14.06.2022 under Sections 376 (2)(n), 506 of the Indian Penal Code, 1860 and Section 6 of the Protection of Children from Sexual Offences Act, 2012, registered at Police Station Women Thana, Karnal.
2. On 13.06.2022 a complaint was moved by the complainant-prosecutrix alleging therein that the petitioner who is the son of her real maternal aunt (Mosi) and paternal uncle (Tau) was sexually harassing her since childhood. It was further alleged that since the age of 08 years, the petitioner raped her several times by extending threats to her. It was alleged that in September 2015 she had gone to the house of her maternal aunt and

there again the petitioner forcibly raped her and threatened to kill her in case she disclosed it to anyone. However, when she disclosed to her maternal aunt and paternal uncle, they scolded the petitioner in front of her and they had also threatened her not to disclose the said act to anyone. Thereafter she disclosed these facts to her mother but her mother also paid no attention. A day before her sister's marriage on 03.05.2022 at about 2/3:00 pm, she had gone to the house of her paternal uncle (Tau) to bring some utensils. The petitioner herein again is alleged to have tried to commit rape upon her, however, she managed to escape. She disclosed the incident to her family members, however, they had told to remain silent as it would impact the marriage. Later after her marriage she disclosed everything to her husband and hence the present FIR was registered

3. Learned counsel for the petitioner would contend that there is an inordinate delay in lodging the FIR as also that except for the statement of the complainant/prosecutrix, there is no other corroborating evidence on the record. Even the mother of the complainant/prosecutrix who is stated to have been told about the entire incident has not been cited as a witness by the prosecution. Learned counsel would further contend that the prosecutrix has since been examined and cross-examined and that out of 09 witnesses, only 01 has been examined. It is further the contention of learned counsel for the petitioner that the petitioner has been in custody for a period of 01 year 05 months and 27 days and that he has absolutely clean antecedents.

4. 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 01 year 05 months and 27 days and there is no other case pending against him. It has been stated in the status report filed by way of affidavit of Suresh Kumar, HPS, Deputy Superintendent of Police, HQ, Karnal that the victim had refused to get herself medically examined. However, it has been contended that the complainant/prosecutrix has supported the case in her statement recorded under Section 164 CrPC as well as in her statement recorded before the Court below. Learned counsel for the State is not in a position to deny the fact that the prosecutrix has since been examined and cross-examined and that out of 09 witnesses only 01 stands examined

5. Heard.

6. In the present case though the first incident alleged is of the year 2006, however, the FIR has been lodged on 14.06.2022. Except for the statement of the complainant/prosecutrix, there is *prima facie* no other corroborating evidence on the record. Even the mother of the complainant-prosecutrix to whom the complainant is stated to have narrated the entire incident has not been cited as a witness. The prosecutrix has since been examined and cross-examined and that out of 09 witnesses, only 01 has been examined. As per the custody certificate, the petitioner has been in custody for a period of 01 year 05 months and 27 days and there is no other case pending against him. 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.

7. 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.
8. 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.
9. 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.
10. Disposed off. Pending applications, if any, also stand disposed off.

21.12.2023
Yogesh Sharma

(ALKA SARIN)
JUDGE

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