

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

CRM-M-21299 of 2023

Date of decision: 03.05.2023

Bhupender

..... Petitioner

Versus

State of Haryana

..... Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Sushil Sheoran, Advocate
for the petitioner.

Mr. Rahul Mohan, DAG, Haryana
for the respondent-State.

MANJARI NEHRU KAUL, J. (ORAL)

This is the second petition filed under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail to the petitioner in case FIR No.51, dated 21.06.2021, under Sections 366A/376(2)(n)/506 of the Indian Penal Code, 1860; Section 6 of Protection of Children from Sexual Offence Act, 2012 and Section 3(2) (v) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, registered at Police Station Women Police Station Charkhi Dadri, District Charkhi Dadri.

While drawing the attention of this Court to the allegations levelled in the FIR in question, learned counsel for the petitioner submits that it was evident that the relations between the petitioner and the prosecutrix, if any, were consensual in nature. He submits that the victim was recovered on the very same day, that she went missing and

it was a matter of record that she declined to subject herself to medico legal examination; while getting her statement recorded before the Child Welfare Committee, she did not level any allegation much less of any wrong doing against the petitioner. Learned counsel submits that it was 06 days thereafter for reasons but obvious, that is, after buckling under the pressure of her family, she levelled allegations against the petitioner and 05 others of having trespassed into her house in the intervening night of 15/16.06.2021, after kidnapping her and then sexually assaulting and violating her person.

Learned counsel for the petitioner submits that no doubt the prosecutrix was a minor, being just about 17 years of age on the date of alleged occurrence, however, the sequence of events, right from the time when she went missing from her house and till the time she was recovered and her statement recorded under Section 164 Cr.P.C., left no manner of doubt that a twisted and concocted version had been put forth by the complainant, who was averse to his daughter's friendship with the petitioner. Learned counsel submits that the petitioner has now been in custody since 02.07.2021 and after the charges were framed on 20.10.2021, only 02 out of 23 prosecution witnesses, have been examined, hence, the trial was unlikely to conclude in the near future more so since an application under Section 319 Cr.P.C had also been moved to summon additional accused. He submits that since the sole material witness in the case in hand, i.e., the victim stands examined before the trial Court, further incarceration of the petitioner in the circumstances would be serve no useful purpose.

Per contra, learned State counsel, while opposing the prayer and submissions made by learned counsel for the petitioner, has not disputed that after the victim was recovered, she declined to get herself medically examined. Further, in her statement recorded before the Child Welfare Committee had not levelled any allegations much less of any wrong doing against the petitioner, and had stated that she had accompanied him of her own accord.

Learned State counsel however submits that in her statement recorded under Section 164 Cr.P.C., the victim had levelled allegations of wrong doing against the petitioner, which she reiterated while stepping into the witness box as PW-2. It has also been submitted by the learned State counsel that even assuming that the victim was a consenting party, her consent would be of no consequence as she admittedly was a minor, aged just about 17 years on the date of occurrence in question. Learned counsel has not disputed that 02 out of the 23 prosecution witnesses, stand examined and an application has been moved by the prosecution for summoning of additional accused under Section 319 Cr.P.C.

I have heard learned counsel for the parties and perused the material placed on record.

The petitioner has been in custody for almost 02 years having been arrested on 02.07.2021. The sole material witness in the case in hand, i.e., the victim stands examined. There is no likelihood, thus, of the trial concluding in the near future and 21 prosecution witnesses remain to be examined.

In the facts and circumstances as enumerated hereinabove, the instant petition is allowed. The petitioner be admitted to bail to the satisfaction of the trial Court/Duty Magistrate concerned. However, it is made clear that anything observed hereinabove shall not be construed to be an expression of opinion on the merits of the case.

03.05.2023

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(MANJARI NEHRU KAUL)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No