

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

206

Criminal Misc. No. M-24200 of 2023

Date of decision :-04.10.2023

Ajay

.....Petitioner

Versus

State of Haryana

.....Respondent

CORAM:- HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Malkiat S. Hundal, Advocate
for the petitioner.

Mr. Brijesh Sharma, AAG, Haryana.

NIDHI GUPTA J. (Oral)

Prayer in this petition filed under Section 439 Cr.P.C. is for grant of regular bail to the petitioner during pendency of the trial in case FIR No.35 dated 03.4.2021, under Sections 363, 366-A, 354, 376, 370, 120-B IPC and Sections 4 and 8 of POCSO Act, 2012, registered at Women Police Station, Charkhi Dadri, District Charkhi Dadri (however, now charged under Sections 354, 376, 376-D and 120-B IPC).

The brief facts of the prosecution case, as recorded by the learned trial Court in its order dated 31.1.2023, reads as under :-

“The case of the prosecution, in brief, is that co-accused Roshan Ali brought the prosecutrix from Assam to Delhi on 30.03.2021 on the pretext of providing a job of domestic help and thereafter he sold the prosecutrix to co-accused Usha who took

the prosecutrix to her house and forced her in the prostitution. She sent the prosecutrix with two unknown persons (later identified as Dayanand alias Deepanshu and Aashish) on 31.03.2021 on the pretext of seeing the room. They took the prosecutrix to a room in the fields where, three persons (later identified as Ajay, Sanjay and Aniket, who belongs to same village of co-accused Dyanand) were already present there and there accused Dayanand, Sanjay, Aashish and Aniket committed rape with prosecutrix while accused Ajay molested her and on the next morning, accused Dayanand took the prosecutrix to Neelkanth Bajigar hotel and there also he committed rape with her and thereafter accused Dayanand left her near bus stand where one person met her who took her to accused Usha and on 02.04.2021 co-accused Usha again sent her with one unknown person who took her to a hotel near the gymnasium where 4-5 persons were already present there and they all committed rape with her and thereafter left her to the house of accused Usha and in the night accused Usha again sent her with three unknown person who took her to the village and there they committed rape with her and in the morning they left her near one fruit shop and from there prosecutrix fled away to save herself from the persons of accused Usha and was sitting at Chowk. There two uncles met her she narrated all the incident to them and then prosecutrix was taken to the police station.”

Learned counsel for the petitioner *inter alia* submits that vide amended charge-sheet dated 05.7.2022 (Annexure P-2), charges under the POCSO Act against the petitioner have been deleted.

Learned counsel submits that the petitioner has not been named in the FIR and even in the test identification parade, the victim did not identify the petitioner. It is submitted that even in her cross-examination (Annexure P-3), the victim has admitted that “ *It is correct that I had not identified accused Ajay and Sanjay test identification parade. Accused Ajay did not committed rape with me.*”

Learned counsel further submits that the petitioner has been in custody since 19.6.2021 and conclusion of the trial will take long time as out of total 63 prosecution witnesses, only 27 witnesses have been examined so far. He also submits that the material witnesses already stand examined, and therefore, no useful purpose will be served by detaining the petitioner further in custody.

Per contra learned State counsel has filed the custody certificate dated 03.10.2023, which is taken on record. As per the said custody certificate, the petitioner has been in custody as undertrial for a period of 02 years, 03 months and 15 days. Learned State counsel opposes the prayer for grant of regular bail to the petitioner on the ground that the victim was 16 years of age at the time of incident and in her statement under Section 164 Cr.P.C., and even in her deposition as PW4, the victim has supported the prosecution case. It is submitted that even the complainant/father of victim, in his testimony, has also supported the case of the prosecution. Learned State counsel submits that out of total 63 prosecution witnesses, 27 witnesses have been examined so far. Learned State counsel further refers to para 5 of the status report dated 08.9.2023 and submits that charges have been framed under Sections 342, 363, 366-A, 376, 376-D, 354, 370-A, 370,

372, 373, 468, 471, 120-B IPC and Sections 4, 6, 8 of POCSO Act, on 30.11.2021. Learned State counsel submits that during medical examination the victim was found pregnant, however, the DNA Report is yet to be received.

I have heard learned counsel for the parties and gone through the case file carefully.

Without commenting on the merits of the case, however, keeping in view the totality of facts and circumstances of the case, including the fact that the trial of the case is likely to consume considerable time as out of total 63 prosecution witnesses, only 27 witnesses including the material witnesses have been examined so far; and keeping in view the custodial period of the petitioner; and the fact that perusal of custody certificate shows that there is no other case pending against him, his further custody may not be justified. Therefore, without meaning any expression of opinion on the merits of the case, it is ordered that the petitioner-Ajay s/o Mukesh Kumar be released on regular bail subject to his furnishing requisite bail bonds/surety bonds to the satisfaction of the trial Court/Duty Magistrate, concerned.

The petition is allowed.

October 04, 2023

Vijay Asija

(NIDHI GUPTA)
JUDGE

Whether speaking/reasoned Yes / No

Whether Reportable Yes / No