

CRM-M-25352-2023 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-25352-2023 (O&M)
Date of decision : 21.09.2023

Rakesh ... Petitioner(s)

Versus

State of Haryana ... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Amit Choudhary, Advocate for the petitioner.

Ms. Mayuri Lakhanpal Kalia, DAG Haryana.

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.400 dated 27.04.2022 under Sections 363, 366-A, 376(3), 354, 506 of the Indian Penal Code, 1860 and Section 6 of the Protection of Children from Sexual Offences Act, 2012, registered at Police Station HTM Hisar, District Hisar.
2. In the present case the FIR was filed by the complainant that the petitioner had lured his daughter from Medicine Factory, Raipur Road and that he was accompanied by his friend Ajay. On the next date, the statement

of the victim was recorded under Section 161 of CrPC wherein she has stated that the petitioner and his friend had molested her after giving her some intoxicating substance. In her statement recorded under Section 164 of CrPC it was reiterated that she had been given some intoxicating substance in a cold drink and thereafter she was molested. It was further stated that since she fainted, she did not know whether any wrong act was done with her.

3. Learned counsel for the petitioner states that the petitioner has falsely been implicated in the present case. The statement of the victim and her cross-examination stand recorded. It is further the contention that the petitioner has been in custody for a period of 01 year 03 months and 24 days and that he has absolutely clean antecedents.

4. Learned counsel for the State has filed the status report along with the DNA result wherein it has been stated that the DNA profile does not match with the DNA profile of the petitioner herein. Learned State counsel has also filed the custody certificate and as per the custody certificate the petitioner has been in custody for a period of 01 year 03 months and 24 days and there is no other case pending against the petitioner.

5. Heard.

6. In the present case the victim had alleged that she had been enticed by the petitioner and two other boys to a secluded place where she was molested. It was also alleged that she had been administered some intoxicating substance and she became unconscious. Thereafter, she was threatened not to disclose the occurrence to any one. On returning home, her

statement was got recorded in the presence of legal aid counsel on 28.04.2022 wherein she has stated that she and her cousin left on foot to go to school, however, the victim turned back to get a book which she had left at home. After about 10 minutes, when the victim was taking her book and going back to school, near Medicine Factory, the present petitioner came on a bike and offered her lift to the school. Since the petitioner was from her locality, she sat on his bike but the petitioner instead of dropping her at her school brought her at a secluded place. She also saw that two boys were following them on their bikes. She was made to have a cold-drink which was intoxicated and thereafter she was molested. She slowly started losing her senses and thereafter she does not remember what happened. At about 03.30/04.00 pm the petitioner brought her at Parav Chowk and arranged an auto and the victim returned home. In the evening she developed stomach pain and she realized that something wrong had been committed with her. The petitioner was medically examined on 28.04.2022 wherein it was opined that the possibility of sexual offence could not be ruled out, however, final opinion was kept pending till the RFSL Report was received. The complainant has since been examined and cross-examined and the DNA Report has also been received. As per the DNA Report, the DNA profile on the source of item No.4 i.e. jeans pants of the victim has not matched with DNA profile of item No.6 i.e. blood sample of the petitioner. As per the custody certificate, the petitioner has been in custody for a period of 01 year 03 months and 24 days and there is no other case pending against the petitioner. 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.

21.09.2023
Yogesh Sharma

(ALKA SARIN)
JUDGE

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