

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CRM-M-33787-2023

Date of Decision: 11.09.2023

Surender @ Monu

.... Petitioner

Versus

State of Haryana

.... Respondent

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present: - Mr. D.S. Virk, Advocate for the petitioner.

Mr. Arjun Lakhanpal, Addl. A.G., Haryana.

NIDHI GUPTA, J. (ORAL)

The petitioner has filed the present 1st petition under Section 439 of the Code of Criminal Procedure, 1973, for grant of regular bail in case FIR No. 289 dated 26.07.2021 (Annexure P-1) registered under Sections 363, 366-A, 365, 376, 302, 201 and 120-B/34 IPC and Section 4 of the Protection of Children from Sexual Offences Act, 2012 at Police Station Rania, District Sirsa.

The aforesaid FIR (Annexure P-1) was registered on the basis of statement of mother of the victim (since deceased) which is reproduced as under:-

“I Santosh W/o Mainpal, caste-illegible is the resident of village Gindra. Today on 25.07.2021 at 8-8:30 p.m. I sent my daughter at dairy to bring milk, when my daughter was coming back from dairy by bringing milk, when she reached near the house, I heard hue and cry of my daughter, when I came outside my house, it saw two unknown persons forcibly taking away my daughter on motorcycle towards village

Kussar. Till the time I raised alarm, the bike had gone at a long distance. Thereafter, I informed the labourers. Then I called on number 112. Thereafter, the team of No. 112 along with the SHO, P.S. Rania came at the spot. Appearance of my daughter is as under: her height is 4 feet, fair complexion, long face, average body, she has worn sky coloured Kurti (ladies shirt), blue coloured lower (trouser), red coloured Dupatta and slippers. She may kindly be searched as soon as possible”.

Learned counsel for the petitioner, *inter alia*, contends that the petitioner has not been named in the FIR, nor even in the statement of the complainant recorded under Section 161 Cr.P.C. It is submitted that the petitioner has come into the picture of this case, on the basis of statement of PW-4 Bhim Sain, who had alleged that the petitioner along with co-accused Vinod, had confessed the committing of crime to said Bhim Sain/PW-4. However, PW-4 Bhim Sain, in his examination-in-chief and also in cross-examination has not supported the prosecution case. It is further submitted that even the parents of the victim PW-1 and PW-2, have not supported the prosecution case in their testimonies before the trial Court. Learned counsel submits that even the alleged eye-witness of the incident, namely, Gurmukh @ Golu S/o Satpal (PW-8) has also turned hostile in the present matter. Learned counsel further submits that the petitioner has been in custody since 07.08.2021. The trial is likely to take long time. No useful purpose will be served by further detention of the petitioner in custody. Thus, it is prayed that petitioner may be released on regular bail.

Status report filed by way of affidavit of Sh. Ajaib Singh, HPS, Deputy Superintendent of Police, Ellenabad, District Sirsa, on

behalf of respondent-State, is taken on record.

Learned counsel for the State has also filed custody certificate dated 09.09.2023, which is taken on record, as per which the petitioner has been in custody as an undertrial for a period of 02 years and 01 month. Learned counsel for the State submits that out of total 33 prosecution witnesses, 08 witnesses have already been examined by the trial Court. It is further admitted that as per FSL report dated 29.09.2021 (Annexure R-3), “semen could not be detected on any of the exhibits mentioned above”.

Having heard learned counsel for the parties, but without commenting on merits of the case, however, keeping in view the totality of the facts and circumstances of the case including the fact that all the material witnesses have already been examined by the trial Court, as well as the fact that petitioner has been in custody for 02 years and 01 month, and that the conclusion of trial will take some time, the present petition is **allowed**.

The petitioner-Surender @ Monu S/o Lakhmi Chand, is ordered to be released on regular bail on his furnishing bail/surety bonds to the satisfaction of the trial Court/Chief Judicial Magistrate/Duty Magistrate, concerned.

However, it is made clear that nothing stated above shall be construed as an expression of opinion on the merits of the case.

11.09.2023

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(NIDHI GUPTA)

JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No