

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

214

CRM-M-37655-2023 (O&M)

Date of order: 08.08.2023

Sukhwinder @ Kaka

.....Petitioner(s)

Vs.

State of Haryana

.....Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Sanchit Punia, Advocate
for the petitioner.

Nidhi Gupta, J.

Present petition is the first petition filed by the petitioner under Section 439 of Code of Criminal Procedure (hereinafter referred to as "Cr.P.C.") seeking grant of regular bail in case FIR No.166 dated 12.02.2022 registered under Sections 354-A, 506 and 376(2)(n) of Indian Penal Code, 1860 (hereinafter referred to as "IPC") and Section 6 of POCSO Act, 2012 at Police Station Hisar Sadar, District Hisar.

2. FIR in the present case was registered on the basis of statement of prosecutrix herself who was 18 years old at the time of alleged incident. Brief facts of the case are that on 12.02.2022, the victim made a police complaint seeking action against one Gurmeet, Kaka (petitioner), and one Kicho Bai. Complainant/victim disclosed that her parents are labourers. It was alleged that the accused were harassing the victim and on raising resistance, victim was threatened. Accused Gurmeet and Kaka (petitioner) were involved in criminal activities and they used to sell drugs. Accused were pressurizing the victim to marry accused/petitioner Kaka otherwise she and her family would be killed. It was also alleged that on 10.02.2022, at about 11 AM, when parents of the victim were away to work and she was alone, the petitioner came there and molested the victim. The petitioner repeated his intention to marry

him failing which her family would be killed. The petitioner also threatened the victim that he will forcibly take her away as and when he would get an opportunity.

3. It is inter alia submitted by learned counsel for the petitioner that in the complaint dated 10.02.2022 as also in the FIR dated 12.02.2022, the complainant has made no allegation of rape against the petitioner. It is submitted that the allegation of rape has been made by the complainant for the first time only in her statement recorded under Section 164 Cr.P.C. on 14.02.2022, wherein she has alleged that the petitioner had raped her about 'two and a half years ago'. It is stated that however, in her statement under Section 161 Cr.P.C. recorded on 14.2.2022 itself, the prosecutrix/complainant has alleged that rape took place 'two and half months' ago. Learned counsel further submits that in her deposition dated 05.04.2023 (Annexure P5) as PW1, the complainant/prosecutrix has admitted that she was 18 years old at the time of incident, however, narrated a fourth version of events. It is contended that therefore, there are too many discrepancies in the case put forth by the complainant, and accordingly, it is clear that the petitioner has been framed, and falsely implicated in the matter.

4. It is further stated that after investigation, two other co-accused have been declared innocent. It is also submitted that the petitioner has been in custody since 12.03.2022.

5. Notice of motion.

6. Mr. Brijesh Sharma, AAG Haryana accepts notice on behalf of respondent-State.

7. Learned State Counsel files custody certificate dated 07.08.2023 which is taken on record, as per which the petitioner has been in custody as undertrial since 13.03.2022 for a total period of 1 year 4 months 25 days. Learned counsel submits that the prosecutrix in her deposition as PW1 (Annexure P5) has supported the case of the prosecution.

8. I have heard learned counsel for the parties.

9. Without commenting on the merits of the matter, however, keeping in view the totality of the facts and circumstances of the case, including the fact that material witnesses already stand examined; and that the trial will take some time to conclude; and the fact that the petitioner has been in custody since 13.03.2022, for a period of 1 year 4 months25 days, the present petition is **allowed**. The petitioner namely Sukhwinder @ Kaka s/o Pahlwan is directed to be released on regular bail on his furnishing bail and surety bonds to the satisfaction of the concerned trial Court/Duty Magistrate.
10. However, it is made clear that nothing stated above shall be construed as an expression of opinion on the merits of the case.
11. Pending application(s) if any also stand(s) disposed of.

08.08.2023
Sunena

(Nidhi Gupta)
Judge

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