

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

210

Criminal Misc. No. M-39123 of 2023

Date of decision :-17.08.2023

Parash

.....Petitioner

Versus

State of Haryana

.....Respondent

CORAM:- HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Ketan Antil, Advocate
for the petitioner.

Mr. Arjun Lakhanpal, Addl. A.G., Haryana
Assisted by ASI Menka.

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.36 dated 12.1.2023 (Annexure P-1), under Sections 376 and 506 IPC and Section 4 of POCSO Act, 2012, registered at Police Station Kundli, District Sonipat, Haryana.

The present FIR was registered on the complaint of brother of the victim alleging therein that he and his parents were doing labour work and on 11.1.2023 when they returned home, they found that his (complainant's) sister/victim, who was alone at home, was scared and crying. On asking, she told the complainant that after he alongwith their parents left the house, petitioner Parash came to their home and after enticement took her away to his room and

forcibly committed rape upon her and also threatened to kill her and her family members if she disclosed the said incident to anybody.

Learned counsel for the petitioner has *inter alia* submitted that the complainant in the present case is brother of the victim. The victim was 13 years of age at the time of alleged incident. Learned counsel submits that the petitioner is in custody since 14.1.2023 and there is no other case against the petitioner except the present one. It is submitted that as per MLR (Annexure P-5) there are no external injuries found on the person of victim. It is submitted that though the victim in her statement under Section 164 Cr.P.C. had supported the case of the prosecution but in her deposition (Annexure P-2) before the learned trial Court as PW2, she stated that *“It is wrong to suggest that accused Paras had committed rape upon me forcibly on 11.01.2023 in his room after putting clothes into my mouth or that I am intentionally not identifying the accused being accused who committed rape upon me on 11.01.2023 in order to save him from legal punishment as my family members have compromised the matter outside the Court or that said compromise is in my knowledge”*. Learned counsel further submits that neither the victim as PW2 nor the complainant/brother of the victim as PW3, or the mother of the victim as PW4 had supported the case of the prosecution.

Per contra learned State counsel has submitted that out of total 15 prosecution witnesses, three material witnesses have been examined. Learned State counsel refers to Annexure P-5 the MLR and submitted that it is recorded in the MLR that possibility of sexual

assault cannot be ruled out. Learned State counsel submits that the custody certificate in this case is not available today.

I have heard learned counsel for the parties.

Perusal of the record shows that the material witnesses have since been examined and there is no other case pending against the petitioner. Nothing is to be recovered from the petitioner. The trial of the case is likely to consume considerable time and keeping in view the fact that the petitioner is in custody since 14.1.2023, 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 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.

August 17, 2023

Vijay Asija

(NIDHI GUPTA)
JUDGE

Whether speaking/reasoned Yes / No

Whether Reportable Yes / No