

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

224

CRM-M-41169-2023 (O&M)

Date of Decision : 21.12.2023

Sonujeet @ Sanajeet @ Sanajit Bag

.....Petitioner

Versus

State of Haryana

.....Respondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Ms. Srija Choudhury, Advocate and
Mr. Abhay Jogan, Advocate for the petitioner.

Ms. Mayuri Lakhanpal Kalia, DAG Haryana.

ALKA SARIN, J. (Oral)

Ms. Srija Choudhury, Advocate has joined the proceedings through video conferencing.

1. This is a petition under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail to the petitioner in FIR No.351 dated 09.09.2022 under Sections 363, 366 of the Indian Penal Code, 1860 and Section 4 of the Protection of Children from Sexual Offences Act, 2012 registered at Police Station Sector 50, Gurugram.

2. The FIR was registered on the complaint of the mother of the prosecutrix wherein she has alleged that she was doing the work of cleaning and her husband was a taxi driver. Her daughter was 14 years of age and studying in 8th standard. On 08.09.2022 at about 7:00 am she left her house for work leaving behind her children. It was further alleged that when she returned home at about 8:00 pm, her daughter was missing from home. Her

daughter could not be found despite searching. It was further alleged that her daughter came back home at about 10:00 pm and on inquiring from the daughter she revealed that the petitioner herein took her on the pretext of roaming. However, he took her to village Tigra and there, in a rented room of his friend, he made forcible relations with her. On the basis of said complaint the present FIR was registered.

3. During the investigation the victim was produced before the Lady Medical Officer, General Hospital, Gurugram where she was medico legally examined. She was also produced before the Child Welfare Committee, Gurugram and provided counseling. Her statement was recorded under Section 164 CrPC. Thereafter her custody was handed over to her parents.

4. Learned counsel for the petitioner has contended that it was a consensual relationship and therefore bail should be granted. In support of her arguments the learned counsel has relied upon the judgments in the cases of *Mahesh Kumar Vs. State (NCT of Delhi) [2023 SCC Online Del 2634]* and *Imran Iqbal Shaikh Vs. The State of Maharashtra & Anr. [Bail Application No.997 of 2022 decided on 26.04.2023]*. It is further the contention of the learned counsel that the victim has since turned hostile and has not supported the version of the prosecution. It is further the contention that the petitioner has been in custody for a period 01 year 03 months and 11 days.

5. Learned counsel for the State has referred to the reply filed by way of an affidavit of Dr. Kavita, HPS, Assistant Commissioner of Police, CAW East, Gurugram and has also filed the custody certificate. As per the

custody certificate the petitioner has been in custody for a period 01 year 03 months and 11 days. Learned counsel for the State has pointed out that the DNA in the present case has matched.

6. Heard.

7. In the present case the victim is a 14 years old child who was subjected to forcible physical relations by the petitioner. Initially, the victim stood by her statement recorded under Section 164 CrPC that the petitioner had made forcible physical relations with her. She was also medico legally examined and the MLR supports the statement as made by the victim recorded under Section 164 CrPC. Though the argument of the learned counsel for the petitioner is that the victim has now turned hostile, however, the said fact alone cannot be a ground for grant of bail especially since the DNA has matched in the present case and the child is 14 years old.

8. In view of the above, I do not find this to be a fit case for grant of regular bail to the petitioner. The present petition being devoid of merit is accordingly dismissed. Pending applications, if any, also stand disposed off.

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.

21.12.2023
Deepak Patwal

(ALKA SARIN)
JUDGE

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