

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

205

Criminal Misc. No. M-44870 of 2023

Date of decision :-14.09.2023

Mathura Prasad

.....Petitioner

Versus

State of Haryana and another

.....Respondents

CORAM:- HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Ritesh Tomar, Advocate
for the petitioner.

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

Mr. Ravinder Kumar, Advocate
For respondent No.2/complainant.

NIDHI GUPTA J. (Oral)

Prayer in this first 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.187 dated 14.6.2022, under Section 6 of the Protection of Children from Sexual Offence Act, 2012, registered at Police Station Industrial Sector 7, Manesar, District Gurugram.

The present FIR was registered on the statement of victim/respondent No.2 herein, which read as under :-

“Statement of Sanjana daughter of Rajesh Kanojia, resident of Village Panditpurva, Police Station Athayisa, Subhashnagar, Gonda, Uttar Pradesh, India age 17 years. Stated that I am resident of abovesaid address. Right now I live with my parents and family on rent in Village

Khau House Sanjay Yadav Manesar Gurugram and I have just given my 10th class paper. I am living with my parents in a rented house for about 5 years, in the same house a boy named Mathura Prasad who lives with his sister and brother in law, Mathura Prasad being a neighbor often interacts with me and while talking he used to tell me that I like you and want to marry you, in which I got into the talk of Mathura Prasad and started talking to Mathura Prasad, meanwhile, Mathura Prasad used to call me to his room many times on some pretext or the other, when no one was there in his room and taking advantage of this loneliness, Mathura Prasad used to do wrong things with me for almost 3 years, when I refused him, he used to say that I will marry you and because of this, Mathura Prasad kept raping me many times for almost 3 years and my health suddenly started deteriorating for 2-3 weeks, which made me found out today I'm pregnant. Mathura Prasad has ruined my life, strict legal action be taken against him, I am giving this statement in the presence of Legal Advisor Smt. Bhagwati Sethi."

Learned counsel for the petitioner *inter alia* submits that the petitioner and the victim were in consensual relationship and at the time of incident, age of the victim was 17 years and the petitioner was 26 years old. It is submitted that even in the FIR, it has been admitted that the petitioner had been in a relationship with the complainant/victim for the last over three years. It is submitted that even a child has been born out of the said wedlock on 18.8.2022.

Learned counsel submits that now a compromise dated 19.8.2023

(Annexure P-4) has been effected between the parties. Learned counsel submits that though the victim in her statement under Section 164 Cr.P.C. had supported the prosecution case, however, in her testimony before the trial Court, as PW2, she has turned hostile.

Learned counsel appearing on behalf of the complainant/victim/respondent No.2 does not dispute the above facts, nor the prayer made on behalf of the petitioner.

Learned State counsel has filed the custody certificate dated 13.9.2023 in Court today. The same is taken on record. Copy thereof is supplied to the counsel opposite.

As per the custody certificate, the petitioner has undergone custody as under-trial including remission for a period of 01 year, 02 months and 22 days. Learned State counsel submits that out of the total 23 prosecution witnesses, only six witnesses, including the material witnesses, have been examined and the next date fixed before the trial Court is 20.9.2023.

I have heard learned counsel for the parties and gone through the case file carefully.

Without commenting on the merits of the case, however, keeping in view the totality of facts and circumstances of the case, including the fact that the trial of the case is likely to consume considerable time as out of total 23 prosecution witnesses, only six witnesses have been examined so far; and keeping in view the custodial period of the petitioner; and the fact that there is no other case pending against him, 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-Mathura Prasad s/o Sri Ram 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.

September 14, 2023

Vijay Asija

(NIDHI GUPTA)
JUDGE

Whether speaking/reasoned Yes / No

Whether Reportable Yes / No