

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CRM-M-44084-2023 (O&M)

Date of Decision: 20.09.2023

Pankaj @ Pankaj Sharma

.... Petitioner

Versus

State of Punjab

.... Respondent

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present: - Mr. C.S. Rana, Advocate for the petitioner.

Mr. Jaswinder Singh Arora, DAG, Punjab.

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. 26 dated 08.02.2023 registered under Section 376 IPC and Sections 4 and 16 of the Protection of Children from Sexual Offences Act, 2012 at Police Station Division No. 5, Ludhiana.

Briefly, the aforesaid FIR was registered on the basis of application moved by the victim/complainant, wherein she has stated that she is aged around 17 years and studying in +1 class at Subedar Senior Secondary School, Kitchlu Nagar, Ludhiana. The petitioner became friend of the victim on social media through Instagram and procured her private photographs and started blackmailing her. On 02.02.2023, the victim was called by the petitioner at Ludhiana Bus stand and, thereafter, on the pretext of some refreshment, he took her into a hotel, where he

committed rape upon her.

Learned counsel for the petitioner, *inter alia*, submits that the petitioner was 22 years old and the victim was more than 17 years old. It is submitted that the victim and the petitioner were in a consensual relationship and had become friends on social media through Instagram. It is further submitted that the date of alleged incident is 02.02.2023, whereas the present FIR was registered, after a delay of 06 days i.e. on 08.02.2023. Learned counsel for the petitioner also submits that as per report of the Chemical Examiner, DNA could not be ascertained and human semen was not found on the exhibits. The petitioner has been in custody since 08.02.2023. The trial is likely to take long time. No useful purpose will be served by further detention of the petitioner in custody. More so, co-accused of the petitioner has already been enlarged on bail by a co-ordinate Bench of this Court, vide order dated 17.05.2023 (Annexure P-4). Thus, it is prayed that petitioner may be released on regular bail.

Per Contra, learned counsel for the State has filed custody certificate dated 19.09.2023, which is taken on record, as per which the petitioner has been in custody as an undertrial for a period of 07 months and 10 days. Learned counsel for the State vehemently opposes the prayer for grant of regular bail to the petitioner and submits that challan in the present case has already been presented before the trial Court, however, charges are yet to be framed by the trial Court. He further contends that allegations levelled against the petitioner are of serious nature. However, learned counsel for the State admits that as per report of

the Chemical Examiner, DNA could not be ascertained and human semen was not found on the exhibits.

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 custody certificate reveals that there is no other case against the petitioner, and the fact that charges are yet to be framed by the trial Court, therefore, conclusion of trial will take sufficient time and no useful purpose would be served by further detention of the petitioner, the present petition is **allowed.**

The petitioner-Pankaj @ Pankaj Sharma S/o Sham Lal, 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.

20.09.2023

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(NIDHI GUPTA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No