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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-46356-2023 (O&M)
Date of decision : 23.11.2023

Avinash Kundra ... Petitioner(s)

Versus

State of Haryana ... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Bharat Sareen, Advocate for the petitioner.

Ms. Priyanka Sadar, AAG Haryana.

Mr. Yogeshwar Dayal Kaushik, Advocate for the complainant.

ALKA SARIN, J. (ORAL)

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.418 dated 06.06.2023 under Sections 376/506/419 of the Indian Penal Code, 1860 registered at Police Station Surajkund, Faridabad, Haryana.
2. The FIR was registered on the statement of the complainant-prosecutrix, wherein it has been stated as under :

“[My name is XXXXX D/o XXXXX R/o XXXXX. I am 12th Pass. Around 10 days back, I was standing near Greenfields, Faridabad, and was waiting for an auto to take me to a nearby temple. While I was waiting for an auto rickshaw, one person stopped by and asked me why

I was standing there and further enquired where I wanted to go. I replied to him that I was waiting for an auto to take me to the Mandir/Temple. The said person, offered to drop me to the Mandir, and further stated that it is difficult to get an auto here. On his request, I took the lift from the said person. On the way the said person enquired my name and phone no and offered to give me a job. I agreed to his proposal for the job and told him that he may inform me regarding the job. After that he had dropped me outside the Mandir and left. During the intervening period/days I spoke to him on few occasions regarding the job prospects. On 4th June 2023 Avinash uncle called me and asked me for my bio-data. I had shared my bio-data over whatsapp messenger application. After the same he asked me to meet near Ankhir, Gol Chakkar around 1 pm. After that uncle took me to Surajkund, Faridabad and took me inside a building, stating that he has his office on the first floor of the said building and one person namely Geeta Madam shall come and take my interview. He further asked me to write the name of Geeta Madam in a register, and thereafter he took me to the first floor of the said building, and asked me to wait till Geeta Madam arrives to take my interview. After some time, uncle closed the room and started forcing himself on me, and despite my refusal/resistance he forcibly raped me. After committing rape he threatened me for life. The name of the uncle is Avinash, and his phone number is 9810845559. I request the police authorities to take legal action against him. Dated 06.06.2023”

3. Learned counsel for the petitioner would contend that the MLR does not support the case of the prosecution as no semen was detected. Learned counsel would further contend that the complainant-prosecutrix has since been examined and she has not supported the version of the prosecution and infact she has stated that no rape was committed upon her. It is further the contention of learned counsel for the petitioner that the petitioner has been in custody for a period of 05 months and 17 days.

4. Learned counsel for the State has filed the custody certificate and as per the custody certificate the petitioner has been in custody for a period of 05 months and 17 days. Learned counsel for the State is not in a position to deny that the complainant-prosecutrix has not supported the case of the prosecution while appearing as PW-1 in the Court. Learned State counsel is also not in a position to deny that the MLR does not support the prosecution version either.

5. Heard.

6. In the present case the complainant-prosecutrix has not supported the prosecution case while appearing as PW-1 in the Court and has stated that no rape was committed upon her. The MLR does not support the prosecution version as no semen was detected. As per the custody certificate, the petitioner has been in custody for a period of 05 months and 17 days. The trial is likely to take some time to conclude and no useful purpose would be served by keeping the petitioner behind the bars any further.

7. In view of the above and without commenting upon the merits of the case, this Court deems it to be a fit case to grant the concession of regular bail to the petitioner. The petitioner is directed to be released on bail subject to his furnishing bail bonds/surety bonds to the satisfaction of the Trial Court/Additional Sessions Judge (Duty) concerned.
8. However, the Prosecution will always be at liberty to apply for cancellation of bail in case the petitioner is found to be misusing the concession of bail in any manner.
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.
10. Disposed off. Pending applications, if any, also stand disposed off.

23.11.2023
Yogesh Sharma

(ALKA SARIN)
JUDGE

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