

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

212

Criminal Misc. No. M-43781 of 2023

Date of decision :-11.09.2023

Upender alias Jitender

.....Petitioner

Versus

State of Haryana

.....Respondent

CORAM:- HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Vikas Kumar Gupta, Advocate
for the petitioner.

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

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.316 dated 03.09.2021, under Section 365 IPC (Charged under Sections 363, 366, 376(2)(n) IPC and Section 6 of POCSO Act vide order dated 14.12.2021), registered at Police Station Israna, District Panipat.

The present FIR has been registered on the statement of complainant/father of the prosecutrix, which reads as under :-

“To SHO Saheb Police Station Israna Sir, my humble request is that I Ishwar S/o Jeetu resident of Village Shahpur District Panipat. I have two children. One is boy and another is girl. Girl is elder whose age is about 15 years and her name is Payal (Palu). That she left for her school today on

3.9.2021 at eight in the morning but she didn't returned from school at 1 pm. On enquiry from the school that she didn't came to school today. I called on her phone and the phone was switched off number is 7027264009. Girl is 5ft tall whitish complexion and slim body. She is wearing blue school uniform. I have full faith that a mason named Upender resident of Gorakhpur UP who worked for 1 month. He used to call at home phone whose number is 7082645131. Now his number is 7988340473. I have full confidence that this is job of mason only. Please look out for my girl”

Learned counsel for the petitioner *inter alia* submits that the prosecutrix in her statement under Section 164 Cr.P.C. (Annexure P-4) has not supported the prosecution case. It is submitted that even the complainant as PW2 has also turned hostile. Learned counsel submits that the petitioner is in custody since 07.9.2021 and out of total 15 prosecution witnesses, only six have been examined so far.

Learned State counsel submits that the victim in the present case was 15 years of age at the time of incident. The petitioner used to work as mason in the house of the complainant. Learned State counsel submits that although the prosecutrix in her statement under Section 164 Cr.P.C. did not support the prosecution case but in her testimony as PW1 she has made categorical allegation that the petitioner has raped her. It is submitted that as per the FSL Report, human semen and blood has been found on the underwear of the prosecutrix. Learned State counsel submits that the DNA Report is still awaited in the matter. Learned State counsel could not produce

the copy of custody certificate, however, submits that the petitioner is in custody since 07.9.2021.

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

After hearing learned counsel for the parties, without expressing anything on merits of the case and keeping in view the facts and circumstances of the case, I do not consider it to be a fit case for grant of bail to the petitioner at this stage. Accordingly, the present petition is hereby dismissed.

September 11, 2023

Vijay Asija

(NIDHI GUPTA)
JUDGE

Whether speaking/reasoned Yes / No

Whether Reportable Yes / No