

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

279

CRM-M-44691-2023 (O&M)
Date of decision: 06.12.2023

Tasleem Khan

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Deepak Goyal, Advocate
for the petitioner.

Mr. Kunwarbir Singh, AAG, Punjab.

MANISHA BATRA, J. (Oral)

1. This petition has been filed by the petitioner under Section 439 Cr.P.C. seeking regular bail in case bearing FIR No.38 dated 24.03.2022, registered under Sections 363, 366A of the IPC (Section 376 IPC and Section 4 of the POCSO Act, 2012 were added later on) at Police Station Mullanpur, District S.A.S. Nagar.

2. Brief facts of the case relevant for the purpose of disposal of this petition are that the aforementioned FIR was registered at the instance of complainant 'B' (*name withheld*) alleging therein that she along with her daughter 'J' (*name withheld*) used to do the work as domestic helps for sweeping, cleaning etc. in different houses. On 23.03.2022, her daughter and

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herself had gone to different houses for doing work at about 07:00 A.M. At about 09:00 A.M., she went to the house, where her daughter had been working, but she found her to be missing. She could not find her anywhere and, therefore, reported the matter to the police. She alleged that later on, she had came to know that her daughter had been enticed away by the present petitioner on the pretext of performing marriage with him. After registration of the FIR, investigation proceedings were initiated. The statement of the victim was recorded under Section 164 Cr.P.C., wherein she alleged that the petitioner, after making her sniff something, had made her unconscious. On regaining consciousness, she found herself to be in Delhi. He had attempted to commit rape upon her. During the course of investigation, offence punishable under Section 376 IPC and Section 4 of the POCSO Act were added. The petitioner was arrested on 24.03.2022 and presently, he is facing trial for commission of offences punishable under Sections 363, 366A and 376 of the IPC read with Section 4 of the POCSO Act, 2012. He had moved an application for grant of regular bail before the trial Court but the same was dismissed, vide order dated 27.10.2022.

3. Learned counsel for the petitioner has argued that the petitioner has been falsely implicated in this case. He is in custody since 24.03.2022. The complainant and the victim have not supported the prosecution version in their respective sworn depositions as recorded before the trial Court and have not implicated the petitioner in the subject crime. The conclusion of trial is to take some time. No useful purpose would be served by keeping him in custody anymore. Therefore, he has argued that the present petition deserves to be allowed.

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4. *Per contra*, learned State counsel has argued that there are serious allegations against the petitioner. The trial is going at a fast pace and there is nothing on record to show that there would be any undue delay in conclusion of the same. The forensic report has been received, as per which, the human semen detected on the vaginal swab of the victim is consistent with DNA profiling of the petitioner. Hence, it is urged that the petition is liable to be dismissed.

5. I have heard learned counsel for the parties and have also gone through the material placed on record very carefully.

6. Copies of statements recorded by the victim as well as her mother before the trial Court have been placed on record of this petition by learned counsel for the petitioner, which reveal that though during the course of recording their statements by way of examination-in-chief, both of them had implicated the petitioner but during cross-examination, they have exonerated him totally from the allegations as levelled by taking a U turn. The trial is likely to take some time. The effect of the report of DNA has to be decided at the time of final conclusion of the trial. The petitioner is in custody since 24.03.2022. No useful purpose would be served by keeping him in custody anymore. It is not the version of the prosecution that he may intimidate the witnesses, rather, the material witnesses have already been examined. Keeping in view the overall facts and circumstances of the case, the present petition is allowed and the petitioner is ordered to be released on regular bail, subject to his furnishing bail/surety bonds to the satisfaction of the trial Court/Duty Magistrate concerned.

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7. It is made clear that any observation made herein above is only for the purpose of deciding the present petition and the same shall have no bearing on the merits of the case.

06.12.2023

Waseem Ansari

(MANISHA BATRA)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>