

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

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CRM-M No.47408 of 2022 (O&M)
Date of decision: 02.11.2023

Gourav alias Raju

... Petitioner

Vs.

State of Haryana

... Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Sushil Kumar Verma, Advocate,
for the petitioner.

Mr. Arjun Lakhanpal, Addl. AG, Haryana.

MANISHA BATRA, J.

1. The present petition has been filed by the petition seeking regular bail under Section 439 of Cr.P.C. in FIR No.7 dated 27.01.2022 registered under Sections 366-A, 376 and 506 of IPC and Section 4 of Protection of Children from Sexual Offences Act, 2012 (For short “POCSO Act”) at Police Station Women Sirsa, District Sirsa, Haryana which was registered on the basis of statement recorded by the prosecutrix (name withheld) alleging that she was 17 years old and that on the intervening night of 24/25.01.2022 at about 2 AM, she had gone to use the toilet existing in the courtyard of her house when the petitioner-accused Gourav was found standing in the street. He called her on the pretext of some work and when she came out of her house, then he forcibly took her to a room existing in the nearby fields and committed rape upon her. He also extended threats to kill her if she disclosed about

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the incident to anyone and she mustered courage to disclose about it to her mother on 27.01.2022 who brought her to the Police Station. After registration of FIR, investigation proceedings were initiated. Medico legal examination of the victim was conducted. The petitioner was arrested on 21.03.2022. After completion of necessary investigation and usual formalities, challan under Section 173 Cr.P.C. was presented in the Court and presently he is facing trial for commission of offences punishable under the aforementioned sections. He had moved an application for regular bail before the learned trial Court which was dismissed vide order dated 13.09.2022.

2. The present petition has been filed by the petitioner alleging that he has been falsely implicated in this case. The prosecutrix did not get her internal medico legal examination conducted. Trial was likely to take time. The prosecutrix and her mother who were material witnesses had already been examined and there was no apprehension of tampering with the prosecution evidence. The statements of the prosecutrix and her mother were inconsistent on material points and hence unreliable. No evidence had been produced by the prosecution to prove the exact date of birth of the victim. There was unexplained delay of 3 days in lodging of the FIR. No useful purpose was going to be served by keeping him in custody any more. Hence it was prayed that he deserved to be given concession of bail. Along with this petition, the petitioner annexed a copy of the statement of the prosecutrix as recorded in the Court and a copy of statement recorded by the mother of the prosecutrix has now been placed

on record.

3. The bail application has been resisted by respondent No.1-State in terms of status report filed on 31.10.2023. It was argued by learned State counsel that the allegations against the petitioner were serious in nature. The prosecutrix had categorically deposed before learned trial Court that the petitioner had subjected her to rape and her version was duly supported by her mother i.e. PW-8. The trial was going on at a good pace and was likely to be concluded within reasonable time. The record of date of birth of the victim was obtained from the school where she studied and proved that she was born on 05.01.2005. The petitioner had not brought any material on record to the contrary and this proved that the prosecutrix was a minor as on the date of occurrence. With these submissions, it was argued that the petition did not deserved to be allowed.

4. I have heard learned counsel for the petitioner and have perused the material placed on record carefully.

5. The petitioner is alleged to have forcibly taken the victim from outside her house on the intervening night of 24/25.01.2022 to some nearby room and is further alleged to have subjected her to rape/aggravated penetrative sexual assault. A perusal of the statement of the prosecutrix as recorded before the learned trial Court reveals that she has supported the prosecution case that she had been subjected to rape by the petitioner. The victim was a minor aged about 17 years at the time of occurrence. It is not the version of the petitioner that she had gone with

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him as per her own consent/wish and even otherwise, she being a minor her consent was immaterial. Though there appears to be some inconsistencies in the statements of the victim and her mother with regard to the manner in which the victim had been taken from outside her house on the night of occurrence but the same cannot be gone into at this stage in detail for the purpose of decision of this petition. There were direct and serious allegations against the appellant. Trial is going on. Keeping in view the nature of the subject offences, the quantum of the sentence which the conviction may entail and the attendant facts and circumstances, this Court is of the considered view that the petitioner does not deserve to be given concession of regular bail. Hence, the petition stands dismissed.

6. All the pending criminal miscellaneous application(s), if any, automatically stand disposed of.

02.11.2023

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(MANISHA BATRA)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No