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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-46243-2023 (O&M)
Date of decision : 02.11.2023

Wakeel ... Petitioner(s)

Versus

State of Haryana ... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Intizar Ul Hasan, Advocate for the petitioner.

Ms. Mayuri Lakhanpal Kalia, DAG Haryana.

Mr. Rohit Choudhary, Advocate for the complainant.

ALKA SARIN, J. (ORAL)

1. The present petition has been filed under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail to the petitioner in FIR No.240 dated 05.09.2022 under Sections 376-D, 365, 450, 506 of the Indian Penal Code, 1860 and Sections 25 of Arms Act, 1959 registered at Police Station Pinangwan, District Nuh. (Later on challan was presented under Sections 376, 365 and 506 IPC).
2. Learned counsel for the petitioner would contend that the FIR in the present case was filed on the basis of the statement made by the father of the victim alleging therein that on 25.08.2022 his daughter was sleeping at home and at that time Sakir son of Siraj and Wakeel son of Rasheed

(petitioner herein) entered his house with country-made pistol and illegal weapons and threatened to kill the victim and put the country-made pistol on the neck of mother of the victim and the accused forcibly took away the victim. The complainant is alleged to have tried to get the girl back, however, he was unable to do so till 01.09.2022. Further, the allegations are that the accused forcibly raped her and had illicit relations with her and when she protested, they threatened to kill her and her family members. On the night of 01.09.2022 the girl was found unconscious by some unknown persons who informed the complainant on the phone and thereafter the complainant brought his daughter home. In the morning, the victim narrated the entire incident. On the basis of the said statement, the present FIR was lodged on 05.09.2022. The medical of the victim was also conducted on 05.09.2022. Learned counsel of the petitioner would contend that the medical does not support the case of the prosecution. It is further the contention of learned counsel that though there were two accused named in the FIR as well as in the statement of the victim under Section 164 CrPC, however, one of them namely, Sakir, was found to be innocent. Learned counsel has further pointed out that though in the FIR the allegations were that the victim was taken away at gun point, however, in her statement recorded on 08.09.2022 she has stated that the accused had taken her away from her house after making her sniff something. It is further the contention of learned counsel for the petitioner that the petitioner has been in custody

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for a period of 11 months and 17 days and that there is no other case pending against him.

3. 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 11 months and 17 days and that there is no other case pending against him. Learned counsel for the State is not in a position to deny that the co-accused was found to be innocent though identical allegations have been made against him. However, she has stated that on the date of incident he was found to be in Rajasthan and hence he was declared innocent.

4. Heard.

5. In the present case the version as set out in the FIR was that the victim was taken away from her house at gun point, however, in her statement recorded under Section 164 CrPC she has stated that she was made to sniff something. Two accused were named in the FIR as well as in the statement recorded under Section 164 CrPC namely the petitioner herein and one Sakir. Sakir was found to be innocent as he was not found to be at the place of occurrence and was in Rajasthan on the date of the alleged occurrence. The involvement of the petitioner would be debatable in view of the facts that as per the allegations made in the FIR the girl was found unconscious on 01.09.2022 and some unknown person is stated to have called the father of the victim and thereafter the father got the girl home. The FIR itself was lodged on 05.09.2022 and the victim was also taken for her medical on 05.09.2022. The medical also does not support the prosecution version.

6. 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.

7. 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.

8. 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.

9. Disposed off. Pending applications, if any, also stand disposed off.

02.11.2023

Yogesh Sharma

(ALKA SARIN)

JUDGE

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