

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

213

CRM-M-46336-2023

Date of Decision: 20.09.2023

Ajay @ Monty

.... Petitioner

Versus

State of Haryana

.... Respondent

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present: - Mr. Sukesh Kumar Jindal, Advocate for the petitioner.

Mr. Brijesh Sharma, AAG, Haryana.

NIDHI GUPTA, J. (ORAL)

The petitioner has filed the present 1st petition under Section 439 of the Code of Criminal Procedure, 1973, for grant of regular bail in case FIR No. 505 dated 24.08.2022 registered under Sections 328, 376-D and 506 IPC and Section 6 of the Protection of Children from Sexual Offences Act, 2012 at Police Station Gannaur, District Sonipat.

The aforesaid FIR was registered on the basis of a complaint moved by the complainant/victim, which reads as under:-

“1. That I, Mansi daughter of Bijender, aged 15 years, Caste Dhanak, am a resident of Patel Nagar, Gannaur, District Sonipat.

2. That I am studying in 11th Class in the Gyandeep School, Gannaur. The accused No. 1-Lucky used to study earlier in our school who is our neighbour and he knows me since that time. The accused No. 1 used to harass me while I used to go to the school and come back, and he used to pressurise me to make friendship and closeness with him, regarding which, I had also made a complaint to my mother Rekha. My mother had also told about this to the school Principal-Rita Tyagi and my teachers-Ankit Sir and Veena Madam. Due to the harassment by accused no. 1, I had

stopped going to the school for one week. After one week, my teacher had herself come to my home to take me to the school.

3. *That accused No. 2-Ajay @ Monty, who is a distant relative of my mother-Rekha, used to work on the shop with my father and he used to stay at our house. The accused No. 1 and accused No. 2 developed friendship with each other and they became each other's confidants. The accused No. 1 got my phone number with the help of accused No. 2 and he started sending messages to me on phone and Instagram proposing to make relations with me, and his intention was to do wrong act with me. The accused No. 1 also started to visit my house with accused No. 2 with his help.*

4. *That when on one day, I was alone at my house, both the accused persons came to my house and they gave me some intoxicating substance by mixing in the cold drinks, and I started to feel giddy and I became unconscious. When I regained my consciousness, I learnt that both the accused had committed rape on me under a planning. After this also, both the accused are threatening me that they had the photographs of this incident with them and if I told about this incident to anyone, then, they shall defame me, and that they had friendship with bad type of people and they shall get me and my family members killed with their help. After this, I got frightened and both the accused started to blackmail me and they started to put pressure on me to bring Rs.5 lakhs from my house, and for this purpose, the accused persons gave intoxicating pills to me and said that I have to give the same to my family members by mixing in their food and then, take out Rs.5 lakhs and the ornaments from my home. However, I put those tablets in the toilet of my house.*

5. *That due to the undue pressure of the accused persons time and again and due to their threat to kill and by getting fed up with the same, I consumed the insecticide liquid of killing mosquitoes on 21.08.2022 and when my condition deteriorated, I was got admitted in the Aggarwal Hospital, Ganaur. I told about this entire incident to my parents in the hospital. After knowing about the entire incident, my father had given a complaint on the same day at the police station, Ganaur against the accused persons, on which, the police people had said that they will take action after the victim becomes mentally and physically stable. I was discharged from the hospital on 23.08.2022. Even now, I and my family members have a danger to our reputation, life and property at the hands of the accused persons. Thus, you are requested that a case of most heinous offence may be registered against the accused persons and necessary legal action may be taken against them."*

Learned counsel for the petitioner, *inter alia*, submits that

the petitioner has been falsely implicated in the present case. The petitioner is the distant relative of the mother of the victim. The aforesaid FIR was registered on the basis of complaint moved by the victim herself, who is 15 years of age. It is submitted that the allegations levelled in the FIR are vague, inasmuch as, no date, time and place of occurrence has been mentioned therein. It has also been submitted that the petitioner had committed rape upon the victim 'one month prior' to the lodging of the FIR on 24.08.2022. There is no explanation as to why there is delay of one month in lodging the FIR. It is further contended that the victim as PW-1 in her testimony dated 23.03.2023 (Annexure P-3) and her father as PW-2 in his examination-in-chief dated 23.03.2023 (Annexure P-4), have turned hostile as they have not supported the prosecution case. Learned counsel for the petitioner also refers to the FSL report dated 29.09.2022, Ex. PX, as per which, no human semen was detected on the clothes of the victim. The petitioner has been in custody since 25.08.2022. The trial is likely to take long time. No useful purpose will be served by further detention of the petitioner in custody. Thus, it is prayed that petitioner may be released on regular bail.

Per Contra, learned counsel for the State has filed custody certificate dated 19.09.2023, which is taken on record, as per which the petitioner has been in custody as an undertrial for a period of 01 year and 25 days. Learned counsel for the State is unable to dispute the fact that the victim as PW-1 and her father as PW- 2 have turned hostile in their testimonies before the trial Court. He further submits that out of total 25 prosecutions witnesses, 14 have already been examined by the trial Court, so far.

Having heard learned counsel for the parties, but without commenting on merits of the case, however, keeping in view the totality of the facts and circumstances of the case including the fact that custody certificate reveals that there is no other case against the petitioner, and the fact that out of total 25 prosecution witness, 14 have already been examined so far, therefore, conclusion of trial will take sufficient time and no useful purpose would be served by further detention of the petitioner, the present petition is **allowed**.

The petitioner-Ajay @ Monty S/o Rajinder, is ordered to be released on regular bail on his furnishing bail/surety bonds to the satisfaction of the trial Court/Chief Judicial Magistrate/Duty Magistrate, concerned.

However, it is made clear that nothing stated above shall be construed as an expression of opinion on the merits of the case.

20.09.2023

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(NIDHI GUPTA)

JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No