

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**226****CRM-M No.47189 of 2023****Date of Decision : 07.12.2023**

Pankaj

....Petitioner

VERSUS

State of Haryana

....Respondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Johan Kumar Advocate for the petitioner.

Ms. Priyanka Sadar, AAG Haryana.

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.11 dated 06.01.2022 under Sections 363 and 366-A of the Indian Penal Code, 1860 and Section 6 of the Protection of Children from Sexual Offences Act, 2012 registered at Police Station Dhauj, Faridabad District Faridabad.

2. The FIR in the present case was registered on the statement of the brother of the prosecutrix that on 05.01.2022 his sister had gone to the fields for animal fodder and she did not return home. It was further stated that on his sister's phone several calls were received from mobile No.70186-74067, however, when he called on the said number it was coming switched off. Thereafter, a complaint was lodged. The prosecutrix was recovered from the house of the sister of the petitioner on 18.01.2022. In her statements recorded under Section 161 CrPC and 164 CrPC, the prosecutrix stated that

she had left the house as she had a quarrel with her mother who wanted to get her forcibly married to a dumb person. It was further stated that she had called the present petitioner, however, he refused to come. Thereafter, she threatened him that if he did not come she would commit suicide and name him. The petitioner came and they went to village Vasantpur Jewar, where the sister of the petitioner lives, and they got married in a temple. The medical of the prosecutrix was conducted on 18.01.2022 and the swabs taken were sent to FSL.

3. Learned counsel for the petitioner would contend that the prosecutrix initially in her statements recorded under Sections 161 CrPC and 164 CrPC had stated that she had left the house as she had a quarrel with her mother who had given her beatings and that she had forced the petitioner to come and take her and threatened him that she would commit suicide and name him if he did not come to fetch her. It is further the contention of learned counsel for the petitioner that FSL Report has since been received and no semen could be detected on the swabs which were taken. Learned counsel for the petitioner has further contended that the prosecutrix has now taken a U-turn in her deposition recorded before the Court and has set up a totally new story wherein she has stated that on 05.01.2022 she along with her friend Anjum and daughter of her sister had gone to the fields to get fodder where two boys came. One boy was with a muffled face and the other boy was the petitioner. The petitioner informed her that the boy who talks to her on the phone is Rihan. Thereafter, he put a handkerchief on her mouth and she became unconscious. When she regained consciousness, she found herself locked in a room situated in village Dastanpur. During the night the petitioner committed rape upon her.

4. Learned State counsel has stated that out of 13 prosecution witnesses only 02 have been examined. The petitioner has been in custody for a period of 01 year 10 months and 18 days. Learned State counsel is not in a position to dispute the fact that the prosecutrix had earlier stated in her statements recorded under Sections 161 CrPC and 164 CrPC that she had gone on her own accord with the petitioner herein and that she had solemnized her marriage with him. Learned State counsel is also not in a position to dispute the fact that in the FSL Report no semen was detected on the swabs which were taken.

5. I have heard learned counsel for the parties.

6. The petitioner has been in custody for a period of 01 year 10 months and 18 days. In the present case initially the FIR was lodged by the brother regarding a missing report of the prosecutrix. Subsequently, the prosecutrix was recovered on 18.01.2022 and on the same day she got her statements recorded under Sections 161 CrPC and 164 CrPC wherein she stated that she had left on her own accord. Rather, she had forced the petitioner to take her and they had also solemnized the marriage. Her medical was also conducted. The FSL Report has since been received in which no semen was detected. Though in her deposition before the Court the prosecutrix has taken a U-turn stating therein that she had been kidnapped by the petitioner and had been raped, which is a total somersault from the earlier statements made by her.

7. In view of the above and without commenting upon the merits of the case and keeping in view the long period of custody, I deem 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.

8. 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.

9. 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.

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

07.12.2023
jk

(ALKA SARIN)
JUDGE

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