

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

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CRM-M-48371-2023 (O&M)

Date of decision: 22.11.2023

Dheeraj Kumar**...Petitioner****Versus****State of Haryana****...Respondent****CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA**

Present:- Mr. Randeep S. Dhull, Advocate
for the petitioner.

Mr. Arjun Lakhanpal, Addl. A.G., Haryana.

MANISHA BATRA, J. (Oral)

1. The present petition has been filed under Section 439 of Cr.P.C. by the petitioner seeking grant of regular bail in case FIR No. 69 dated 19.03.2023, registered under Sections 363, 506 of the IPC and Sections 4, 6, 17, 18 of the POCSO Act, 2012 at Police Station Sector 56, District Gurugram.

2. Brief facts of the case relevant for the purpose of disposal of this petition are that the aforementioned FIR was registered on 19.03.2023 on the statement recorded by 'T' (*name withheld*) alleging therein that on 17.03.2023, his minor daughter 'K' (*name withheld*) had boarded an auto at Hong Kong Bazaar to leave for her school in Wazirabad at about 07:00 O'clock in the morning. She did not come back home. He searched for her but could not find her anywhere. After registration of the FIR, investigation proceedings were initiated. Efforts were made to trace out the victim. On 21.03.2023, the complainant gave a telephonic information to the police that

his daughter had been found outside Devi Lal Stadium. Her custody was taken. Her statement was recorded by the police as well as under Section 164 of Cr.P.C. and it was revealed that on 17.03.2023, accused Vishnu, along with co-accused Bhim Sen, had met her when she was present in front of Devi Lal Stadium and by alluring her had taken her to a room of accused Bhim Sen, wherein accused Vishnu had committed rape upon her. Accused Bhim Sen also attempted to ravish her but on her wailing, he dropped her in front of Devi Lal Stadium in morning of 18.03.2023 at about 04:00 A.M. Then on 20.03.2023, accused Bhim Sen, Suraj and juvenile in conflict with law 'R' (*name withheld*) had allured her and taken her to a guest house situated in Sector 52, Gurugram, wherein petitioner Dheeraj Kumar, who was uncle of accused Suraj, was present. Care taker of the said guest house had provided a room to accused Suraj and 'R', wherein accused 'R' had tried to commit rape upon her but accused Suraj had stopped him from doing so and on 21.03.2023, she was dropped in the rented room of the petitioner, who had dropped her in front of Devi Lal Stadium.

3. During investigation, accused Bhim Sen, Vishnu and the petitioner were arrested. They were interrogated and suffered disclosure statements. Medico-legal examination of the accused Vishnu and Bhim Sen was conducted. Offences under Sections 363, 506 of the IPC and Section 17 of the POCSO Act were added. After completion of investigation and usual formalities, *challan* was presented against the accused persons including the petitioner and presently, he is facing trial for commission of offences punishable under Sections 363, 506 of the IPC and Section 17 of the POCSO Act. He had filed applications for grant of bail before the learned

trial Court, which had been dismissed.

4. The present petition has been filed by the petitioner on the grounds and his counsel argued that the petitioner has been falsely been implicated in this case. No act, subjecting the victim to aggravated penetrative sexual assault, had been attributed to him. Neither there was any allegation that he was one of the accused persons, who had abetted the same. His involvement in the commission of offence punishable under Sections 363 and 506 of the IPC had also not been made out on the basis of the allegations levelled by the prosecution on the face of the same. He is in custody since 23.03.2023. His custodial interrogation was no more required. The trial was likely to take some time. There were no chances of him intimidating the witnesses. Therefore, it was argued that the petitioner deserves to be given concession of bail.

5. The petition has been resisted by the State in terms of report dated 24.10.2023. It is submitted therein and learned State counsel argued that the petitioner had given a room in the guest house, wherein he was working, to the accused Suraj, Vishnu and Bhim Sen, who had brought the victim along with them and accused Vishnu had committed rape upon the victim in the said room, whereas accused 'R' and Bhim Sen had attempted to commit wrong act upon her. The abetment on the part of the petitioner, qua commission of offence of rape by the accused, could be inferred from these allegations, which were serious in nature. The testimony of the victim is yet to be recorded. There are chances of the petitioner to intimidate the victim and other material witnesses. Therefore, he argued that the petitioner does not deserve to be released on bail.

6. I have heard learned counsel for the parties at a considerable length and have perused the record.

7. The petitioner Dheeraj Kumar, who is maternal uncle of co-accused Suraj, is alleged to have facilitated/abetted the commission of offence of aggravated penetrative sexual assault upon the minor prosecutrix by making available a room in the guest house, in which, he was working, to the accused, who had brought the prosecutrix along with them. The offence of rape had been committed by accused Vishnu in the same room, whereas co-accused 'R' and Bhim Sen had also attempted to commit rape upon the victim therein only. Petitioner might not have been himself involved in the commission of the act of ravishing the minor victim, but from the allegations levelled, an abetment in commission of the said offence on his part, stands prima facie made out from the allegations as levelled by the prosecution. The trial is going on. There is nothing on record to show that there would be any undue delay in conclusion of the same.

8. Keeping in view the gravity of the allegations as levelled against the petitioner, the quantum of 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.

22.11.2023

Waseem Ansari

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No