

226 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-49642-2023

Date of Decision: 19.10.2023

SUNIL KUMAR

... PETITIONER

VS.

STATE OF HARYANA

.. RESPONDENT

CORAM: HON'BLE MR. JUSTICE VIVEK PURI

Present : Mr. Kanwaljit Singh, Senior Advocate with
Mr. Anirudh Gupta, Advocate, for the petitioner.
Mr. Surinder Kumar Dagar, DAG, Haryana.

VIVEK PURI, J.(ORAL)

1. The petitioner is seeking regular bail in the case bearing FIR No. 188 dated 24.09.2020 under Sections 376(3)/376-D/452/506 IPC and Section 6 of the POCSO Act registered at Police Station Dhand.
2. Status report by way of affidavit of Amit Kumar, Deputy Superintendent of Police, Kaithal on behalf of the respondent-State and custody certificate have been placed on record.
3. Briefly, the FIR has been registered on the allegations that the victim is aged about 16 years and used to study in the outer room of the house. The petitioner alongwith his brothers namely Sandeep Kumar and Sunny Kumar had been visiting her in the room, black-mailing her and committing rape for the last 4/5 months. They also threatened to kill her and her family in the event she disclosed the incident to anyone.
4. Learned Senior counsel for the petitioner contends that the petitioner is in custody for a period of 03 years and 17 days and not involved in any other case. During the course of trial, the brothers of the petitioner have been summoned as co-accused on the application under Section 319 Cr.P.C. They have surrendered in the Court and have been released on pre-arrest bail. The statement of the victim as well as her mother after the appearance of the co-accused in trial Court has also been recorded. No specific date has been

mentioned with regard to the occurrence in the FIR. Moreover, as per the report of the FSL, no semen was detected.

5. Learned State counsel has opposed the bail application on the score that the victim has attributed specific and categoric allegations with regard to commission of penetrative sexual assault against the petitioner and the co-accused. The victim is aged about 16 years at the time of occurrence and out of 17, 06 witnesses have been examined so far.

6. It is significant to note that the petitioner is in custody for a period of 03 years and 17 days and not involved in any other case. The statement of the victim and her mother during the course of trial has been recorded and as such, it cannot be said that the petitioner can, in any manner, win over or influence them. The report of FSL does not indicate that any semen was detected. The allegations in the FIR are with regard to commission of rape for a period of 4/5 months prior to the registration of the FIR but no specific date of any such incident has been mentioned. The genuineness of the allegations as put forth by the prosecution in such circumstances will be a debatable and moot point during the course of trial. 11 witnesses still remain to be examined. The conclusion of trial is likely to take some time and no fruitful purpose will be served by detaining the petitioner in further custody.

7. In such circumstances, sufficient grounds are made out to extend the concession of bail to the petitioner. Accordingly, without making any observation on the merits of the case, the present petition is allowed and petitioner is ordered to be released on bail, subject to his furnishing bail/surety bonds to the satisfaction of concerned trial Court/Chief Judicial Magistrate/Duty Magistrate.

19.10.2023
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(VIVEK PURI)
JUDGE

Whether speaking/reasoned
Whether Reportable

: Yes/No
: Yes/No