

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**226****CRM-M No.49079 of 2023****Reserved on : 04.10.2023****Date of Decision : 10.10.2023**

Mohammad Asif alias Mo Asif

....Petitioner

VERSUS

State of Haryana

....Respondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Narender Pal Bhardwaj, Advocate for the petitioner.

Ms. Mayuri Lakhanpal Kalia, DAG Haryana.

ALKA SARIN, J.

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.79 dated 04.03.2021 under Sections 363, 366-A and 34 of the Indian Penal Code, 1860 registered at Police Station Pinjore, District Panchkula wherein challan has been presented under Sections 363, 366-A, 368, 34 IPC and Section 6 of the Protection of Children from Sexual Offences Act, 2012 and charges have been framed under Sections 363, 366-A, 368, 376, 34 IPC and Section 6 POCSO Act.

2. The FIR in the present case was registered on the complaint of mother of the victim. It was alleged in the complaint that the elder daughter of the complainant was 18 years of age, younger daughter was 15 years and the youngest son was 11 years of age. Her husband drives a three-wheeler. It was also alleged that she used to take the goats for grazing and her daughter i.e. victim in the present case used to bring tea for her. On 04.03.2021 at

about 05.15 pm, she saw two boys taking her daughter in a car and her daughter was shouting. She came back home and enquired from her elder daughter who informed that the victim had gone to serve her tea. After realizing the circumstances, she went along with her husband to the Police Station and lodged a complaint. On the basis of the said complaint an FIR was registered. The victim was recovered from Saharanpur on the next day i.e. 05.03.2021. She was medically examined and was produced before the Magistrate for recording of her statement under Section 164 CrPC on 08.03.2021. Her statement under Section 164 CrPC is stated to have been recorded thrice. The petitioner in the present case was arrested on 08.03.2021.

3. Learned counsel for the petitioner would contend that the petitioner has falsely been implicated in the present case and that there are three separate statements which have been got recorded under Section 164 CrPC by the prosecutrix. It is further the argument that the victim had completely exonerated the petitioner and that she has stated that her mother and elder sister used to torture her and keep her starving for food. Learned counsel for the petitioner would further contend that in her statement under Section 164 CrPC the victim has stated that she had left the house on her own accord. Learned counsel for the petitioner has further contended that there are major flaws in the investigation in the present case. Firstly, there were no external injuries observed over the body of the petitioner, whereas had it been a case of rape there would have been struggle marks. Secondly, PW-9 Dr. Jyoti Sahu, MO, SDH, Kalka has stated in her statement that there are no signatures of the victim or her guardian on the consent form (Mark DA) before conducting her medical examination. It is further the contention

that even in the medico-legal report the history given is that she had gone to Saharanpur by bus and spent the night on the footpath. On 06.03.2021 the parents of the victim had refused for her medical examination. She was again brought for medical examination at night and even at that time she did not give any history of sexual contact. Lastly, it is argued by learned counsel for the petitioner that there is no proof *qua* the age of the victim. Learned counsel for the petitioner would further contend that the co-accused, namely, Junaid Ahmed, has since been granted regular bail by a Co-ordinate Bench of this Court vide order dated 25.07.2023 passed in CRM-M-7249-2022.

4. Learned State counsel has stated that the medical examination of the victim reveals that the victim was pregnant and when the DNA test was carried out it matched with that of the petitioner. It is further the argument that even if it is presumed that the victim had gone voluntarily with the petitioner, however, the same would be of no consequences keeping in view the fact that age of the victim is 15 years.

5. I have heard learned counsel for the parties.

6. In the present case the victim is 15 years of age and on the basis of the complaint lodged by the mother of the victim the FIR was registered. The victim was recovered from the bus-stand at Saharanpur and her statement under Section 164 CrPC was recorded. Her medical was also conducted and her pregnancy test came positive. On 20.03.2021 the medical termination of pregnancy of the victim was conducted. The DNA test of the foetus has matched with that of the petitioner. There are a number of calls and SMS also exchanged between the petitioner and the victim as has been noticed in the order dated 25.08.2023 passed by the Additional Sessions Judge, Panchkula. The reliance of learned counsel for the petitioner on the

order passed by the Co-ordinate Bench granting bail to the co-accused would be of no help to the petitioner inasmuch as the petitioner stands on a totally different footing, his DNA profile having matched with that of the aborted foetus of the victim. The argument of learned counsel for the petitioner that there are flaws in the prosecution evidence cannot be gone into at this stage. It would be suffice to say that the DNA profile of the foetus has matched with the DNA of the petitioner. The school leaving certificate from the school authorities mentioned the date of birth of the victim as 28.05.2005 and the incident is of 04.03.2021 which means the victim was 15 years 09 months and 04 days old at the time of incident.

7. In view of the above, I do not find any merits in the present petition and the same is accordingly dismissed. Pending applications, if any, also stand disposed off.

(ALKA SARIN)
JUDGE

10.10.2023
jk

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