

Neutral Citation No.2023:PHHC:161749

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CRM-M No.55645 of 2023

Date of decision: 16.12.2023

Sonu

... Petitioner

Vs.

State of Haryana and others

... Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Govind Chauhan, Advocate,
for the petitioner.

Mr. Arjun Lakhanpal, Addl. AG, Haryana,
for the respondent-State.

MANISHA BATRA, J.

1. The present petition has been filed by the petitioner for grant of regular bail in case bearing FIR No.180 dated 09.03.2019 registered under Sections 363 and 366-A IPC (Section 376 (2) (n) of IPC and Section 6 of Protection of Children from Sexual Offences Act, 2012 (For short "POCSO Act") were added later on) at Police Station Assandh, District Karnal.

2. Brief facts relevant for the purpose of disposal of the present petition are that the aforementioned FIR had been registered on the basis of a written complaint filed by complainant "S" (name withheld) alleging therein that her daughter "P" (name withheld) studying in 10th Class had gone to take her examination in the morning of 08.03.2019, but did not return. She had made search for her but could not find her. She raised

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suspicion that her daughter had eloped with the present petitioner. After registration of FIR, investigation proceedings were initiated. On 13.03.2019, the victim came to the police station concerned. She recorded her statement under Section 164 of Cr.P.C. on 14.03.2019 disclosing that it was she who had taken the petitioner along with her and further that whatever happened between them was with her free will. The victim was got medico legally examined. Her statement was recorded by the police. Thereafter offences under Section 376 (2) (n) of IPC and Section 6 of POCSO Act were added. The petitioner who is a juvenile in conflict with law was detained on 28.03.2019. He was interrogated and suffered disclosure statement. He also demarcated the place of occurrence. After completion of necessary inquiry, final report was prepared and presented before the Juvenile Justice Board, Karnal. Vide order dated 02.09.2020 passed by the Juvenile Justice Board, the petitioner was ordered to be treated as an adult and was directed to be tried by the Children Court. The petitioner had moved an application for grant of regular bail before the concerned Court which was dismissed vide order dated 23.08.2022.

3. The present petition has been filed by the petitioner seeking benefit of regular bail, on the grounds and it has been argued by his counsel that he has been falsely implicated in this case. He is in custody for a period of more than four and half years. At the time of commission of the alleged offences, he was less than 18 years of age. Irrespective of the fact that he has been ordered to be tried as an adult, he is still entitled

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to grant of regular bail under the provisions of Section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (For short “Act, 2015”) as there is no material on record to show that his release is likely to bring him into association with any known criminal, or; that it will expose him to moral, physical or psychological danger, or; that his release defeats the ends of justice. Material witnesses have since been examined. The trial is likely to take time. Therefore, it is argued that he deserves to be released on regular bail.

4. The respondent-State has resisted the plea as taken by the petitioner for grant of regular bail by filing status report. It is submitted therein and learned State counsel has vehemently argued that there were specific and serious allegations against the petitioner. As per the FSL report, the DNA of the seminal stains found on the clothing of the victim had matched with the DNA profiling of the petitioner. The release of the petitioner on bail would defeat the ends of justice. In her sworn deposition recorded before the Court, the victim has levelled specific allegations as against the petitioner of commission of offence of aggravated penetrative sexual assault. The petitioner has committed a heinous crime. There is nothing to show that there would be any undue delay in conclusion of the trial. The release of the petitioner on bail would certainly defeat the ends of justice. Hence, he has argued that the petition does not deserve to be allowed.

5. I have heard learned counsel for the petitioner and learned State counsel and have gone through the record.

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6. It is not in dispute that at the time of commission of the subject offence, the petitioner was below the age of 18 years and was a juvenile. The Juvenile Justice Board vide order dated 02.09.2020 had directed to treat the petitioner as an adult and for his trial to be conducted before the Children Court. He is alleged to have taken away the victim who is a minor along with him and is further alleged to have committed the act of aggravated penetrative sexual assault/rape upon her.

7. The provisions of Section 12 of Act, 2015 manifest that ordinarily the Juvenile Justice Board/Court is under an obligation to release the juvenile on bail except in the circumstances when there are reasonable grounds for believing; that his release is likely to bring him into association with any known criminal; that his release is likely to expose him to moral, physical or psychological danger and further that release of the juvenile in conflict with law would defeat the ends of justice. The intention of the legislature is to grant bail to the juvenile under the provisions of Section 12 of the Act, 2015, irrespective of the nature of gravity of the offence alleged to have been committed by the juvenile and as such gravity of the offence is not relevant consideration for declining the bail. A juvenile can be denied such concession if any of the three contingencies as specified above, is available. It is apparent from these contingencies that bail to juvenile is not must in all cases. There may be some facts and circumstances which cannot be simply brushed aside by the Court. The law does not say that once a person is found juvenile, he should be released on bail notwithstanding other facts

and circumstances of the matter.

8. While considering the prayer made by the petitioner for bail in cases related to rape/aggravated penetrative sexual assault upon a minor as in this case, the Court is required to see whether release of the juvenile would not expose him to the danger of retribution by the society. The Hon'ble Apex Court has cautioned the Courts to be more sensitive in dealing with juvenile in cases of serious nature like sexual molestation, rape and gang rape etc. in an authoritative pronouncement cited as **Om Prakash v. State of Rajasthan and another**, (2012) 5 SCC 201 wherein it was observed that Act, 2015 which is certainly meant to treat a child in conflict with law with care and sensitivity offering him a chance to reform and settle into the mainstream of society, cannot be allowed to be used as a ploy to dupe the course of justice while conducting trial and treatment of heinous offences. This would clearly be treated as an effort to weaken the justice dispensation system and hence cannot be encouraged.

9. It is also well established by a catena of judgments that the object of Act, 2015 is not only reformatory but is also retributive to some extent while dealing with grant or refusal of bail, the ends of justice compel the Court to strike a balance between conflicting demands of justice of both sides i.e. the accused as well as the victim. The object of Act, 2015 is to achieve not only the welfare and betterment of juvenile by extending him services of reformatory nature but also to address the concern of society at large. As such, striking balance is necessary while

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considering the matter of bail of a juvenile from the angle of not only the interest of the child but demand of justice to the victim and the concern of society at large as well since the offence of aggravated penetrative sexual assault is against the society.

10. Looking into the facts of the case in view of this position of law, it is observed that as per the allegations, the victim who was a minor was induced by the petitioner on the pretext of performing marriage and was taken away from lawful custody of her guardians. Though in her statement recorded under Section 164 of Cr.P.C., she had stated that she had taken the petitioner along with him and whatever had been happened between them was as per her free will, but her consent cannot be considered to be material, she being a minor. The statement of the prosecutrix and her mother's statements have since been recorded before the trial Court and copies of the same have been annexed with the status report filed by the respondent-State as Annexures R-1 and R-5. A perusal of the statement of the prosecutrix reveals that she has made a categorical statement that she had been enticed away by the petitioner and forcibly subjected her to sexual intercourse. Her statement is shown to be supported by the testimony of her mother. Copy of report received from the Forensic Science Laboratory, Madhuban, Haryana has also been annexed with the status report which shows that the DNA profiling of the seminal stains detected on the salwar of the victim have matched with the DNA profiling of the blood sample of the present petitioner. Keeping in view the fact that not only the interest of the petitioner as a juvenile in

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conflict with law is to be taken care of, but as well as of the prosecutrix who is also a child, in my considered opinion, the provisions of Section 12 of the Act, 2015 cannot be interpreted in a manner so as to give advantage to the petitioner only while ignoring the need and welfare of the prosecutrix who is victim of a heinous crime. In view of this discussion, it is held that the petitioner is not entitled to be released on bail as his release would certainly defeat the ends of justice. Accordingly, the petition is dismissed.

16.12.2023	(MANISHA BATRA)
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Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No