

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CRM-M No.56750 of 2023
Date of Decision: 09.11.2023

Anil ... Petitioner
Versus
State of Haryana ... Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Sarun Hans, Advocate,
for the petitioner.

Mr. Arjun Lakhanpal, Addl. AG, Haryana.

MANISHA BATRA, J.

1. The present petition has been filed by the petitioner seeking anticipatory bail in case bearing FIR No.117 dated 08.05.2022 registered under Sections 363, 366-A and 342 of IPC read with Sections 10 and 17 of Protection of Children from Sexual Offences Act, 2012 (For short “POCSO Act”) at Police Station Garhi, District Jind, Haryana.

2. Brief facts of the case relevant for the purpose of disposal of this petition are that on 08.05.2022, a written complaint was submitted by “R” (name withheld) alleging therein that on 08.05.2022, the victim “P” (name withheld) who was his minor daughter, had gone missing from their house. He had started making search for her daughter and found that two youths were taking her along with them in a bike near the Canal Bridge area. The complainant managed to stop the vehicle but those youths fled away while leaving the victim at the spot. The victim disclosed the names of those youths as juvenile in conflict with law “A” (name withheld) who is presently facing enquiry before Juvenile Justice Board and Anil and told her father that juvenile “A” had forcibly taken

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her away from her house on a bike and the petitioner Anil had met them in the canal area. He had alighted from the bike and had caught hold of her from behind. Both of them had taken her under the over bridge of railway crossing and had committed rape upon her and while they were taking her somewhere else when they were seen by her father.

3. As per the allegations, FIR was registered and investigation proceedings were initiated. The statement of the prosecutrix was recorded on 25.05.2022 wherein she stated that juvenile "A" had taken her away from her house on 08.05.2022 and had molested her. He had then taken her to house of one Tanni resident of Village Gurthali and they had stayed there for some time. Both juvenile "A" and Tanni had molested her but did not commit rape upon her. She stated that the petitioner had neither molested her nor raped her nor he had abducted her. The accused juvenile "A" had been detained and challan report was presented against him before the Principal Magistrate, Juvenile Justice Board, Jind. After recording the testimony of the victim by way of examination-in-chief, an application under Section 319 of Cr.P.C. had been filed by the complainant before Juvenile Justice Board for summoning the present petitioner as an additional accused. Vide order dated 03.07.2023, the said application was allowed and the present petitioner was ordered to be summoned as an additional accused for commission of offences punishable under Sections 363, 366-A and 342 of IPC read with Sections 10 and 17 of POCSO Act. The petitioner had moved an application for grant of anticipatory bail before learned Fast Track Court which was dismissed vide order dated 09.10.2023.

4. The present petition has been filed by the petitioner on the grounds and it has been argued by his counsel that he has been falsely

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implicated in this case. The victim has changed her versions invariably during the course of investigation as while recording her statement under Section 164 of Cr.P.C., she had not implicated the petitioner in the subject crime though he was named earlier. Even her sworn deposition was self-contradictory with regard to complicity of the petitioner in the subject crime and he has already challenged the order dated 03.07.2023 passed by the learned Principal Magistrate by filing a petition in High Court. His custodial interrogation is not required. Therefore, he urged that the petitioner deserved to be given concession of anticipatory bail.

5. Learned State counsel has already received advance notice of the petition and has not chosen to file any reply to the petition. It is, however, submitted by him that since the allegations against the petitioner are serious in nature, therefore, he does not deserve to be given concession of bail.

6. The petitioner-accused had been booked in this case on the basis of statement recorded by the father of the prosecutrix to the effect that he along with the juvenile “A” had kidnapped his daughter and had sexually assaulted her and had committed rape upon her. It is revealed from the documents placed on record that in her statement which was recorded by the victim on 08.05.2022, she had stated that the petitioner along with the juvenile “A” had taken her away from her home and had molested her and tried to commit rape upon her. Then in her statement on 25.05.2022, she had stated that the present petitioner had not done anything with her nor he had taken her away on a motorcycle nor she had been sexually assaulted or ravished at his hands. The petitioner counsel has also placed on record copy of sworn deposition of the prosecutrix as recorded before learned Principal

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Magistrate, Juvenile Justice Board which shows that though she stated in her examination-in-chief that the juvenile “A” had taken her away from her house on a bike and the present petitioner had joined them on the way and then both of them had committed wrong act with her but during cross-examination, she is shown to have stated that the present petitioner had neither taken her on motorcylce nor had sexually assaulted her. The learned Principal Magistrate is shown to have passed order dated 03.07.2023 thereby summoning the present petitioner as an additional accused on the basis of this very statement. It is debatable as to whether on such evidence which had come on record during trial of the juvenile “A”, any case for summoning the present petitioner as an accused had been made out at all or not? The custodial interrogation of the petitioner is not at all required as he has been summoned as an accused in pursuance of allowing of application under Section 319 of Cr.P.C. In the above discussed circumstances, in my considered opinion, it is a fit case for extending benefit of anticipatory bail to the petitioner. Hence, the petition is allowed and the petitioner is ordered to be admitted to bail subject to his appearing before the concerned Court within a period of 20 days and further subject to his furnishing personal and surety bonds to the satisfaction of the concerned Court and on compliance of provisions of Section 438 (2) of Cr.P.C.

09.11.2023
manju

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No