

**204 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-59239-2023 (O&M)

Date of decision : 18.12.2023

Pushpinder

.....Petitioner

versus

State of Haryana

..... Respondent

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

**Present :- Mr. Samay Singh Sandhawalia, Advocate
for the petitioner.**

Ms. Upasana Dhawan, AAG, Haryana.

RAJESH BHARDWAJ, J. (Oral)

CRM-49432-2023

Application is allowed as prayed for.

CRM-M-59239-2023

Petitioner has approached this Court by way of present second petition praying for grant of regular bail in case FIR No.553 dated 25.12.2019, under Sections 328, 363, 366-A, 365, 368, 370-A, 372, 373, 376, 313, 120-B of IPC and Section 6 of Prevention of Children from Sexual Offences Act and Sections 4, 5, 6 of Immoral Traffic (Prevention) Act, 1956.

Adumbrated facts of the case are that the statement of Krishan Kumar was recorded by the police wherein he alleged that he had six daughters and one son. His daughter (victim) was 16 years of age and she was studying in 9th Class in Government Senior Secondary School, Kaithal. On 20.11.2019 at about 02:00 PM, his daughter (victim) left home but did not return back. They tried their best to search her but failed to trace her out. It was suspected that some unknown boy had enticed her away on the pretext of marrying her. Request was made to take legal action. On the basis

of the statement, formal FIR was registered and investigation commenced. During investigation, the victim was recovered on 30.04.2020 from Ganganagar, Rajasthan. Her statement under Section 161 Cr.P.C. was recorded on 30.04.2020 and thereafter, her statement under Section 164 Cr.P.C. was recorded on 02.05.2020. In both these statements, name of the petitioner was not mentioned. However, her supplementary statement was recorded on 15.07.2020 wherein the petitioner was named in the case for the first time. Resultantly, he was arrested on 28.07.2020. He approached the learned Judge, Special Court, Kaithal praying for grant of bail, however, the same was declined by learned Judge, Special Court vide order dated 02.11.2020. Thereafter, the petitioner approached this Court praying for grant of bail, however, after hearing counsel for the parties, the same was declined vide order dated 04.11.2022. Thereafter, again, petitioner approached this Court by filing second petition i.e. CRM-M-3925-2023, however, the same was disposed of with direction to the trial Court to conclude the trial within six months. As the trial did not conclude, the petitioner has approached this Court by way of filing present third petition.

Learned counsel for the petitioner has vehemently contended that the petitioner has been falsely implicated in this case and is behind bars from last about 39 months. He submits that as is evident from the record, the victim went missing from her home on 20.11.2019 and thereafter, she was recovered from Rajasthan on 30.04.2020 i.e. after about 05 months. Though the statement of the prosecutrix were recorded under Section 161 Cr.P.C. on 30.04.2020 and under Section 164 Cr.P.C. on 02.05.2024, he submits that petitioner was not named in the FIR. However, in the supplementary statement of the prosecutrix recorded thereafter on 15.07.2020, petitioner was deliberately named in this FIR. He has submitted that there are no

specific allegations made against the petitioner regarding the offence alleged. He submits that in the supplementary statement, the prosecutrix has named 08 accused, however, the police has challenged only 04 of the accused and rest 04 accused have been let off for the reasons best known to it. It is submitted that though the prosecutrix witnesses have been examined however, the trial is being intentionally delayed by rest of the co-accused and petitioner is being victimized. He submits that there is no medical corroboration of the ocular version made by the prosecutrix. He submits that speedy trial is the right of the petitioner which is blatantly being defeated in the present case. He submits that the prosecutrix after having been recovered was married to some boy by her parents however, she died a natural death and thus, could not be examined. He has submitted that the petitioner is facing trial in this case for the offence under Section 376 IPC and Section 6 of POCSO Act and qua rest of the offences, he has not been charged. He submits that in the facts and circumstances of the case, petitioner deserves to be granted regular bail.

Per contra, learned State counsel has opposed the submissions made by counsel for the petitioner. She submits that the prosecutrix evidently was minor who was thrown in the flesh trade by the accused. She has submitted that though in the initial version of the prosecutrix, petitioner was not named however, in the supplementary statement, she named the petitioner with rest of the accused. She submits that after a thorough investigation, challan was presented against 04 of the accused and as on date, all 04 accused are behind bars. She has submitted that all the prosecution witnesses have been examined and out of 23 defence witnesses, 11 witnesses already stand examined.

I have heard learned counsel for the parties and perused the record.

Evidently, petitioner is behind bars since the date of his arrest i.e. 28.07.2020 i.e. for the last more than 03 years. It is also evident that the petitioner was not named in the FIR and in the statements under Sections 161 and 164 Cr.P.C. However, his name surfaced in the case on 15.07.2020 when the supplementary statement of the prosecutrix was recorded. There is no gainsaying that the speedy trial is the right of every accused. The same is evident from the fact that out of 23 witnesses, 11 defence witnesses have been examined. It has been submitted by counsel for the petitioner that application under Section 311 Cr.P.C. has been filed by co-accused for summoning more witnesses and thus, there is every probability that the trial would be further prolonged. This Court would refrain itself from commenting anything on the merits of the case. However, keeping in view the custody period undergone by the petitioner and the stage of trial, the petitioner is entitled to be released on bail. Accordingly, the present petition is allowed and the petitioner is ordered to be released on bail on his furnishing bail/surety bonds to the satisfaction of the concerned trial Court/Duty Magistrate. Nothing said herein shall be treated as an expression of opinion on the merits of the case.

(RAJESH BHARDWAJ)
JUDGE

18.12.2023
m. sharma

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No