

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

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CRM-M No.61402 of 2023
Date of decision: 14.12.2023

Kuldeep alias Pinku

... Petitioner

Vs.

State of Haryana

... Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Ajay Kamboj, Advocate,
for the petitioner.

Mr. Neeraj Poswal, AAG, Haryana.

MANISHA BATRA, J.

1. The present petition has been filed under Section 439 of Cr.P.C. for grant of regular bail to the petitioner in case bearing FIR No.0089 dated 10.05.2022 registered under Sections 376 (2) (n), 457 and 506 of IPC and Section 6 of Protection of Children from Sexual Offences Act, 2012 (For short "POCSO Act") (Sections 376, 376 (3) and 376 (2) (f) of IPC and Sections 4 (2) of the POCSO Act and Section 3 (2) (v) of The Scheduled Castes and The Scheduled Tribes (Prevention of Atrocities) Act, 1989, were added later on) at Police Station Titram, District Kaithal.

2. Brief facts relevant for the purpose of disposal of this petition are that the aforementioned FIR has been registered on the basis of a written complaint filed by the complainant "S" (name withheld) alleging

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therein that the victim “A” (name withheld) was his 16 years old niece. Her parents had died 4-5 years back and she along with her other siblings was living with him. On the intervening night of 9/10.04.2022 petitioner-accused Pinku alias Kuldeep who is son of maternal uncle of the victim, had committed rape upon her and thereafter also he had ravished her several times. He alleged that the victim did not disclose about this fact to him as the petitioner had extended threat to face dire consequences otherwise. He alleged that even on the day of his reporting the matter to the police, the petitioner had done something wrong with the victim due to which she had left their house and on making search for her, she was found in Hanuman Vatika.

3. On the basis of his complaint, initially a case under Sections 376 (2) (n), 457 and 506 of IPC read with Section 6 of POCSO Act was registered. Investigation proceedings were initiated. During investigation, the statement of the prosecutrix was recorded on 10.05.2022 wherein she recorded that from the last two years, the petitioner had been committing rape upon her and he had also committed rape upon her on the 9th and 14th day of the previous month. Then on 24.05.2022, another complaint was submitted by the victim herself before the police alleging therein that infact, it was the accused Manjeet who had been ravishing her without her consent for the last two years on the pretext of performing marriage and even on 09.05.2022, he had told her to reach at Hanuman Vatika by saying that they would ran away from there and it was on the asking of accused Manjeet that she had gone to Hanuman Vatika and stayed there

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the whole day. She further disclosed that on the same evening, Kavita with whom accused Manjeet lived, had reached there along with the family members of the victim and said Kavita had threatened her not to disclose anything to the police about Manjeet but to involve the accused Kuldeep. She submitted that it was out of fear and under the influence of Kavita that she had taken the name of accused Kuldeep. On this complaint, an entry in the diary was made at Sr. No.1267 on 24.05.2022. The statement of the victim was again got recorded under Section 164 of Cr.P.C. on 26.05.2022 before the Illaqa Magistrate, Kaithal wherein she stated that it was infact accused Manjeet who had been ravishing her from the last one and half years. He had even been giving her some intoxicating pills which she used to mix in the food of her siblings and then he used to come to her house and commit rape upon her.

4. The present petitioner was arrested on 10.05.2022. The co-accused Manjeet was also arrested. After completion of necessary investigation and usual formalities, challan was presented in the Court and presently, the petitioner as well as the accused Manjeet are facing trial for commission of offences as mentioned above.

5. 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 implicated in this case. The victim herself admitted in her complaint submitted to the police on 24.05.2022 that she had falsely involved the petitioner in this case and he had never committed rape upon her. Even in her statement recorded under Section 164 of Cr.P.C. she had taken the

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name of the accused Manjeet as the person who had committed the offence of aggravated penetrative sexual assault upon her from the last two years. Then while recording her sworn testimony before the trial Court on 01.06.2023, she has not involved the petitioner in the complicity of the subject crime. Even the complainant who has appeared as PW-2 has not implicated him. No useful purpose would be served by keeping him in custody any more. The trial is likely to take time. Hence, it is argued that he deserves to be extended benefit of bail.

6. Per contra, learned State counsel has argued that the allegations against the petitioner are serious in nature. The DNA report is still awaited. Hence, he has argued that the petition does not deserve to be allowed.

7. The petitioner is alleged to have ravished the prosecutrix several times before lodging of the FIR. Initially, the victim had taken his name as the person who had committed offence of aggravated penetrative sexual assault with her. However, while exonerating him from those allegations, subsequently the victim took the name of the co-accused who is presently facing trial with the present petitioner. The statements of the prosecutrix and the complainant which have been recorded before learned trial Court have been perused which show that they have not deposed anything to involve the petitioner in the offences for which he has been chargesheeted.

8. Keeping in view the nature of the evidence that has come on record before the trial Court, the fact that the petitioner is in custody

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since 10.05.2022 and the attendant facts and circumstances of the case but without meaning to make any comment on the merits of the case, I am of the considered opinion that the petition deserves to be allowed. Hence, the same is allowed and the petitioner is ordered to be admitted to bail subject to his furnishing personal as well as surety bonds to the satisfaction of learned trial Court.

14.12.2023

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(MANISHA BATRA)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No