

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

215

CRM-M-609-2024

Date of Decision: 28.02.2024

Jitender

.... Petitioner

Versus

State of Haryana

.... Respondent

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present: - Mr. Sudhir Rana, Advocate for the petitioner.

Mr. Surinder Kumar Dagar, DAG, Haryana.

NIDHI GUPTA, J. (ORAL)

The petitioner has filed the present 1st petition under Section 439 of the Code of Criminal Procedure, 1973, for grant of regular bail in case FIR No. 85 dated 25.03.2023 registered under Sections 363, 366 and 376(2)(n) IPC and Section 6 of the Protection of Children from Sexual Offences Act, 2012 (Section 366-A IPC was deleted and Sections 366 and 376(2)(n) IPC were added during the investigation) at Police Station Munak, District Karnal.

The aforesaid FIR was registered on the basis of complaint moved by the mother of the victim, which is reproduced as under:-

“....Sir, the request is that I am Shomi wife Rajender resident of village Kurlan. I work as a labourer. I have a

daughter whose age is 16 years, name is xxxx. I had gone to Assandh for some work in the morning on 24-03-2023. My daughter was at home with her maternal grandparents. My daughter xxxx, who went away from home without informing her grandparents, we have searched for her among our relatives and in the neighbourhood. Her whereabouts are not known. Please traced out my daughter, her description is as follows, aged about 16 years, height 4 feet 7 inch, dark complexion, round face, she was wearing suit salwar and Punjabi jutti (shoe) in feets. She is not having any mobile...”

Learned counsel for the petitioner, *inter alia*, submits that in the present case the victim went missing on 24.03.2023, whereupon the present FIR was registered on 25.03.2023 in which the petitioner was not named. It is submitted that it is only in the supplementary statement made by the complainant/mother of the victim on 29.03.2023 that the petitioner was named for the first time. Thereafter, the victim was recovered on 30.04.2023 from Punjab and not from the custody of the petitioner. Statement of the victim under Section 164 Cr.P.C. (Annexure P-1) was recorded on 01.05.2023, wherein she did not name the petitioner. Thereafter it is only in her testimony dated 07.11.2023 before the trial Court as PW-1 that the victim has greatly improved her version and has alleged that on the asking of one ‘RK’, she went with the petitioner inside the room of a hotel, where the petitioner had made physical relations with her. It is submitted that none of the abovesaid allegations have ever been levelled by the complainant or by the victim at

any stage prior to recording of statement of the victim as PW-1. It is further contended that even as per the MLR, no injuries were found on the person of the victim. The petitioner has been in custody since 02.05.2023. The trial is likely to take long time. No useful purpose will be served by further detention of the petitioner in custody. Thus, it is prayed that petitioner may be released on regular bail.

Learned counsel for the State has filed custody certificate dated 27.02.2024, which is taken on record, as per which the petitioner has been in custody as an undertrial for a period of 09 months and 25 days. As per custody certificate, there is no other case against the petitioner.

Per Contra, learned counsel for the State vehemently opposes the prayer for grant of regular bail to the petitioner and submits that as per MLR it has been reported that possibility of sexual intercourse cannot be ruled out. It is submitted that the victim in her statement under Section 161 Cr.P.C. recorded on the same day i.e. 01.05.2023 on which date her statement under Section 164 Cr.P.C. (Annexure P-1) was also recorded, had categorically stated that the petitioner had forcibly taken her to the hotel, where he had made physical relations with her. On a query by this Court regarding medical record of the victim, learned counsel for the State submits that FSL report has not yet been received.

Having heard learned counsel for the parties, but without commenting on merits of the case, however, keeping in view the totality of the facts and circumstances of the case and the custody period undergone by the petitioner including the fact that the custody certificate

reveals that there is no other case against the petitioner; moreover, material witness the victim, already stands examined; and out of total 19 prosecution witnesses only 01 witness has been examined till date, therefore, conclusion of trial will take considerable time and no useful purpose would be served by further detention of the petitioner. Thus, the present petition is **allowed**.

The petitioner-Jitender S/o Joginder Singh, is ordered to be released on regular bail on his furnishing bail/surety bonds to the satisfaction of the trial Court/Chief Judicial Magistrate/Duty Magistrate, concerned.

However, it is made clear that nothing stated above shall be construed as an expression of opinion on the merits of the case.

28.02.2024
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(NIDHI GUPTA)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No