

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

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CRM-M-1439-2024 (O&M)
Date of decision: 29.04.2024

Pankaj @ Ankaj ...Petitioner

Versus

State of Haryana ...Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Parveen Kaushik, Advocate
for the petitioner.

Ms. Nidhi Garg, AAG, Haryana.

MANISHA BATRA, J. (Oral)

1. This petition has been filed by the petitioner under Section 439 Cr.P.C. seeking regular bail in case bearing FIR No. 0041 dated 01.02.2022, registered under Sections 363, 366 and 376 of IPC and Section 4 of the POCSO Act at Police Station Line Par Bahadurgarh, District Jhajjar.
2. Brief facts of the case relevant for the purpose of disposal of this petition are that on 01.02.2022, the complainant 'S' (*name withheld*) submitted a written complaint alleging therein that the victim 'N' (*name withheld*), who was his youngest daughter studying in 6th Class in a local school, had gone to a nearby shop to buy something but did not return. He had made search for her but could not find her. He raised suspicion that she had been enticed away by some unknown person. A case under Section 365 of IPC was registered initially. The victim was recovered from Gurugram on 04.05.2022. Her statement under Section 164 of Cr.P.C. was recorded, wherein she stated that she had fled away willingly from her house along with

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the petitioner. They had firstly gone to Bahadurgarh from their village and then to Delhi and thereafter to Gurugram. She also stated that she loved the petitioner and nobody else had hand in this episode. Her medico-legal examination was conducted. The petitioner was arrested on 06.05.2022. His disclosure statement was recorded, wherein he admitted his involvement in the commission of subject crime. Offence under Sections 365 of IPC was deleted and offences under Sections 363, 366 and 376 of IPC and Section 4 of the POCSO Act were added. After completion of necessary investigation and usual formalities, *challan* under Section 173 Cr.P.C. was presented and presently, the petitioner is facing trial for commission of aforementioned offences. He had moved an application for grant of regular bail before the trial Court but the same had been dismissed, vide order dated 10.11.2023.

3. The present petition has been filed by the petitioner on the grounds and his counsel has argued that he has been falsely implicated in this case. He is in custody since 06.05.2022. The victim and her parents have since been examined and, therefore, there is no question of the petitioner's intimidating them. The victim had herself stated that she had willingly accompanied the petitioner as she was in love with him. The victim and the petitioner had performed marriage and lived as husband and wife for more than three months and the victim had disclosed herself to be a major. No useful purpose would be served by keeping him in custody. With these broad submissions, it is urged that the present petition deserves to be allowed and the petitioner deserves to be released on regular bail.

4. Status report has been filed by the respondent-State, as per which, there are serious and specific allegations against the petitioner, who

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had enticed away the minor victim out of custody of her lawful guardians when she only about 13 years' old and had repeatedly ravished her. It is argued by learned State counsel that the consent of the victim was not material. All the material witnesses have been examined and the victim as well as her family members have deposed in support of the prosecution version. There is nothing on record to show that the trial is likely to take time. There are chances of the petitioner's absconding, if extended benefit of bail. Hence, it is argued that the present petition is liable to be dismissed.

5. I have heard learned counsel for the parties and have also gone through the material placed on record very carefully.

6. As per the allegations, the victim, who was a minor aged about 13 years and was studying in 6th Class as on 01.02.2022, had been taken out of lawful guardianship of her parents and was kept by the petitioner with him for a period of three months and had been subjected to aggravated penetrative sexual assault. In her statement recorded under Section 164 of Cr.P.C., undisputedly, the victim had deposed that she had willingly gone with the petitioner as she was in love with him. However, the copies of the statements of the victim and her parents as recorded before the trial Court have been placed on record by learned counsel for the petitioner and on a perusal of sworn deposition of the victim, who appeared as PW-1, it is revealed that she specifically deposed that the petitioner had enticed her away on the pretext of performing marriage with her and committed rape on her. Learned counsel for the petitioner has also placed on record a certificate of marriage, wherein the date of birth of the victim is shown as 07.07.2002. However, as per prosecution version, she was only 13 years' old at that time. A perusal of the

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statement of the victim and her parents reveals that neither of them had controverted on the point of her age during the course of cross examination, though the victim stated that while recording her statement under Section 164 of Cr.P.C., she had disclosed that she was 17 years’ old but she stated that she told so as she was scared at that time. If the age of the prosecutrix is in dispute, certainly that question will be decided by the trial Court after thorough assessment of the evidence to be produced before it during trial. The trial is at its fag end as most of the witnesses have since been examined. As per FSL report, human semen was detected on the vaginal swabs of the victim and the same along with the blood samples of the petitioner has been sent for DNA examination. The allegations against the petitioner are serious and specific in nature. Keeping in view the discussion as made coupled with the gravity of allegations as levelled against the petitioner, the quantum of sentence which the sentence may entail and the attendant facts and circumstances, I am of the considered opinion that the petition does not deserve to be allowed. Hence, the same is dismissed.

7. It is made clear that any observation made herein above is only for the purpose of deciding the present petition and the same shall have no bearing on the merits of the case.

29.04.2024

Waseem Ansari

(MANISHA BATRA)
JUDGE

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