

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

208

CRM-M-735-2024 (O&M)
Date of decision: 20.04.2024

Sxxx

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Punit Malik, Advocate
for the petitioner.

Mr. Arjun Lakhanpal, Addl. A.G., Haryana.

MANISHA BATRA, J. (Oral)

1. The petitioner, who is a juvenile and is being tried as an adult by the Children Court, Gurugram and has been facing trial in case arising out of FIR No. 580 dated 15.12.2022, registered under Sections 363, 366 of IPC (Section 6 of the POCSO Act added later) at Police Station Palam Vihar, Gurugram, has filed this petition making prayer for grant of regular bail.
2. Brief facts of the case relevant for the purpose of disposal of this petition are that the aforementioned FIR was registered against the petitioner on the basis of a written complaint filed by the complainant 'R' (*name withheld*) on 15.12.2022 alleging therein that on the previous day, the victim 'K' (*name withheld*), who is his minor daughter, had left for her school

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at 10:00 AM but did not return home. He had made search for her and came to know that she had been enticed away by one Ishan. Initially, a case under Section 363 and 366-A of IPC was registered. Investigation proceedings were initiated. The victim was recovered on 17.12.2022. Her statement under Section 164 Cr.P.C. was recorded. She was medically examined. Thereafter, offence under Section 6 of the POCSO Act was added. The petitioner, who was named by the victim and who was also a juvenile, was apprehended and joined in investigation. He suffered disclosure statement admitting his involvement in the subject crime. After completion of the inquiry, a final social and background investigation report was submitted before the Juvenile Justice Board, Gurugram as against the petitioner. Vide order dated 14.07.2023, the case of the petitioner was sent to the Children Court by the Principal Magistrate of Juvenile Justice Board by observing that he needed to be treated as an adult and presently, the petitioner is facing trial before the Children Court. He had moved an application for grant of regular bail, which had been dismissed, vide order dated 21.12.2023.

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. The prosecutrix as well as the complainant, i.e. her father, have not supported the prosecution version and have not implicated him in commission of offences, for which he is facing trial. He is in custody since 31.01.2023. There are no chances of his tampering with the evidence or intimidating the witnesses as the material witnesses have already been examined and the remaining witnesses are police officials or formal witnesses. While declining his plea for bail, the learned Children Court did not take all these facts into

consideration and hence, it is argued that the petitioner deserves to be given concession of bail.

4. Learned State counsel, on the other hand, has argued that there are serious allegations against the petitioner. Semen has been detected on the underwear of the victim, as per RFSL report. DNA report is still awaited. There are chances of the petitioner's absconding from the process of law, if extended benefit of regular bail. Therefore, he has 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 carefully.

6. As per the allegations, the victim had been enticed away by the petitioner and had been subjected to aggravated penetrative sexual assault. She had come back home on 17.12.2022. Though, in her statement recorded under Section 164 Cr.P.C., the victim had implicated the petitioner in the commission of aforementioned offences but on a perusal of her statement recorded before learned Children Court (Annexure P-1), it is revealed that she deposed that she left her home on 14.12.2022 on being scolded by her father. She had gone to the house of some relative and came back on 17.12.2022. She denied that the petitioner had either enticed her away or had committed rape upon her. She is even shown to have been declared hostile on the request made by learned public prosecutor and was cross-examined in detail by him but she is still shown to have taken the same stand. The victim is even stated during her cross-examination that she had not handed her undergarments to the doctor, thereby falsifying the version of the prosecution that human semen was detected on the underwear of the victim. Meaning thereby, she had denied

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that she was either kidnapped or ravished by the present petitioner. Even, complainant/father of the victim, while appearing as PW-4, is shown to have stated that though he had lodged a complaint as against the petitioner as the fact of his daughter being enticed away by the petitioner was disclosed by her friends but he also stated that his daughter had come back on 17.12.2022 and that the petitioner did not entice her away nor had ravished her. In this manner, the star witnesses of the case are not shown to have supported the prosecution case. Though, semen is alleged to have been detected on the undergarment of the victim, as per RFSL report, however, at this stage, there is nothing on record to suggest that the semen was of the petitioner and even victim has denied having given any underwear to doctor. More so, the victim had disclosed herself to be 19 years' old, while recording her statement on 14.11.2023 and stated that her date of birth was 24.04.2004. Meaning thereby that on the date of occurrence, she was not a minor, being aged about 18 years and 07 months. Keeping in view the nature of evidence which has come on record in the form of testimonies of the victim and the complainant i.e. her father, the period spent by the petitioner in custody coupled with the fact that the trial is likely to take time and there are no chances of the petitioner's intimidating the witnesses, since the material witnesses have already been examined, I am of the considered opinion that no useful purpose would be served by keeping him in custody anymore.

7. Accordingly, the present petition is allowed and the petitioner is ordered to be released on regular bail, subject to his furnishing bail/surety bonds to the satisfaction of the Children Court/Duty Magistrate concerned.

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8. 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.

20.04.2024

Waseem Ansari

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned

Whether reportable

Yes

Yes