

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

224

CRM-M-1088-2024 (O&M)
Date of decision: 29.04.2024

Dinanath ...Petitioner

Versus

State of Haryana ...Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Mohit Kumar, Advocate
for the petitioner.

Mr. Neeraj Poswal, 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. 0411 dated 27.08.2023, registered under Sections 363, 366-A, 366, 376(2)(n), 506, 216, 120-B of IPC and Section 6 of the POCSO Act at Police Station Narnaund, District Hisar.
2. Brief facts of the case relevant for the purpose of disposal of this petition are that on 27.08.2023, the complainant 'S' (*name withheld*) submitted a written complaint alleging therein that the victim 'N' (*name withheld*), who was his daughter aged about 15 years, had gone missing from the house on the night of 26.08.2023. They had made search for her at their own level but could not find her. He alleged that accused Kuldeep, who was

Neutral Citation No. 2024:PHHC:057568

son of the present petitioner, was also found missing from his house and his cell phone was also going switched off and, therefore, he suspected that the victim had been enticed away by the accused Kuldeep. On this complaint, initially a case under Sections 363 and 366-A of IPC was registered. Investigation proceedings were initiated. The victim was recovered on 07.09.2023. She was got medically examined. Her statement under Section 164 of Cr.P.C. was recorded before the Magistrate, wherein she alleged that on 27.08.2023, accused Kuldeep had taken her and had committed rape upon her. Offences under Sections 376(2)(n) of IPC and Section 6 of the POCSO Act were invoked. On 20.10.2023, the complainant and his wife recorded their statements under Section 161 of Cr.P.C. alleging that the petitioner along with co-accused Deepak had conspired with his son Kuldeep and had helped him in enticing away the victim from the custody of her parents and that co-accused Deepak had made all arrangements for stay of the victim and co-accused Kuldeep in Baddi (Himachal Pradesh) with the help of his friend Sushil. Offences under Sections 216 and 120-B of IPC were also added. The petitioner and co-accused Deepak were arrested on 26.10.2023. On interrogation, they suffered disclosure statements admitting their involvement in the commission of subject crime. The co-accused Kuldeep could not be arrested. After completion of necessary investigation and usual formalities, *challan* was presented against the present petitioner and co-accused Deepak and they are facing trial for commission of aforementioned offences. The petitioner had moved an application for grant of regular bail before the trial Court but the same had been dismissed, vide order dated 05.12.2023.

Neutral Citation No. 2024:PHHC:057568

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 26.10.2023. His custodial interrogation is no more required. No incriminating evidence has been found against him and he has been involved in this case only on the basis of suspicion. The investigation has since been completed. *Challan* has been filed. No useful purpose would be served by keeping him in custody. He is suffering from multiple health problems including heart ailment and eye problems. In her statement recorded under Section 164 of Cr.P.C., the victim had not recorded any statement against him. 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, the petitioner along with co-accused Deepak had entered into a conspiracy with his son, i.e. co-accused Kuldeep, and had aided him in enticing away the victim and had even made arrangements for stay of co-accused Kuldeep at Baddi (Himachal Pradesh) along with the victim and, therefore, his involvement in the commission of the offences as alleged against the co-accused Kuldeep had also been made out against him. Learned State counsel has, thus, argued that in view of the gravity of offences, the petitioner does not deserve to be given benefit of bail, especially in the circumstances when the presence of the co-accused Kuldeep has not been procured so far and the victim has also not been examined.

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

6. The petitioner along with the co-accused Deepak has been booked for commission of offences punishable under Sections 216 and 120-B of IPC. The allegations against him are that he along with co-accused Deepak had facilitated the commission of offence of kidnapping and aggravated penetrative sexual assault by his son upon the minor victim. However, it is a debatable question as to whether any case under Section 216 of IPC has been made out against the petitioner or not. As per Section 216 of IPC, any person who knows or is having reason to believe that any other person is about to commit or has recently committed robbery or dacoity, harbours him with the intention of facilitating the commission of offence of robbery or dacoity or off screening him or others from punishment is liable for imprisonment. It is not the version of the prosecution that the petitioner had harboured any offender who had committed offence of robbery or dacoity. Therefore, it can be stated that the provisions of Section 216 of IPC are not *prima facie* attracted to the peculiar facts of the present case.

7. So far as the allegations that he had harboured or facilitated commission of offences punishable under Sections 363, 363-A, 376 of IPC and Section 6 of POCSO Act by his son and had conspired with him for the purpose of kidnapping the victim and getting her subjected to rape/aggravated penetrative sexual assault at the hands of his son are concerned, the case of the prosecution in this regard rests on the statements of the complainant and his wife, as claimed to have been recorded on 20.10.2023, i.e. after a gap of about two months from the date of occurrence and also after a considerable gap of time from the date of recovery of the victim. The petitioner is in custody since 26.10.2023. The investigation against him has been completed. Trial has

Neutral Citation No. 2024:PHHC:057568

commenced and is likely to take time. No doubt, the son of the petitioner has not been arrested till date but this cannot be held to be a ground for denying benefit of bail to the petitioner. Keeping in view the nature of allegations as levelled against the petitioner, the period of his incarceration, the incriminating material available on record against him till date and the attendant facts and circumstances, I am of the considered opinion that no useful purpose would be served by keeping him in custody anymore.

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

9. 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