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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-1695-2024

Date of Decision:- 08.04.2024

KANHAIYA KUMAR

....Petitioner.

Vs.

STATE OF HARYANA

...Respondent

CORAM:-HON'BLE MS. JUSTICE AMARJOT BHATTI

Present:- Mr. Amit Khari, Advocate for petitioner.

Mr. Deepak Grewal, DAG, Haryana.

AMARJOT BHATTI, J. (Oral)

1. The petitioner – Kanhaiya Kumar has filed the instant petition under Section 439 Cr.P.C. for grant of regular bail in FIR No.100 dated 14.02.2022, under Sections 363, 366 of IPC (Section 376 (2) (n) of IPC and Section 6 of POCSO Act added later-on), registered at Police Station Old Industrial Panipat, District Panipat.

2. The facts of the case are that complainant Sanju gave her statement that on 14.02.2022 her daughter i.e. victim aged about 14 years went for her school at 9:00 am., but she did not reach the school. Kanhaiya Kumar took her daughter with the intention to marry her. With these allegations, the case was registered and the investigation was started.

During investigation, the victim was recovered and her statement was recorded under Section 164 Cr.P.C. before the Magistrate. Subsequently, the offences under Section 376 (2) (n) IPC and Section 6 of POCSO Act were added. The victim was subjected to medical examination. On 17.03.2022, the victim was handed over to her mother. On 22.03.2022 Child Welfare Committee, Panipat passed an order and recommended for abortion in view of the interest/benefit of the victim. Accordingly, abortion was done on 01.04.2022 in Government Hospital, Panipat. After framing of chargesheet, the case is pending for prosecution evidence.

3. Learned counsel for petitioner argued that earlier the petitioner had filed regular bail application before the Court of learned Additional Sessions Judge/Fast Track Court (POCSO), Panipat which was declined vide order dated 21.12.2023. Copy of said order is Annexure P-6. A criminal revision bearing CRR-2683-2022 preferred against that order was also declined vide order dated 18.01.2023 which is Annexure P-7. It is pointed out that earlier the trial was at initial stage. Now prosecution has examined both the material witnesses who have failed to support prosecution case. The statement of mother of the victim examined as PW1 is Annexure P-3 and the statement of victim recorded as PW2 is Annexure P-4. The trial of this case may take long time. Considering the aforesaid changed circumstances, the regular bail application filed by petitioner may be allowed.

4. The bail application is opposed by learned counsel representing the State. Copy of DNA report in this FIR was produced on the previous date i.e. 05.04.2024, which is taken on record. Learned State counsel fairly conceded that due to DNA degradation or poor quality of the genetic

material DNA profiling could not be done. Therefore, no specific report could be received. However, considering the gravity of offence, the present petitioner is not entitled to be released on bail.

5. I have considered the arguments and the aforesaid factual position. It is matter of record that earlier regular bail application filed by Kanhaiya Kumar was declined by learned Additional Sessions Judge/Fast Track Court (POCSO), Panipat vide order dated 21.12.2023 and the criminal revision preferred against the said order was also declined vide order dated 18.01.2023, copies of aforesaid orders are Annexure P-6 & Annexure P-7 respectively. The trial is pending before the aforesaid Court for recording prosecution evidence. Learned counsel for petitioner has also placed on record copies of statements recorded before the trial Court i.e. of mother of the victim and the victim herself who failed to support the prosecution version. Copies of their statements are Annexures P-3 & P-4. Coupled with this, learned State counsel has also placed on record DNA report received from FSL, Madhuban dated 04.04.2024 according to which no specific conclusive report was received regarding DNA profiling. The present petitioner was arrested on 10.03.2022 and he is behind the bars for the last about 2 years. As per status report, out of thirteen prosecution witnesses, seven prosecution witnesses have been examined. The conclusion of trial may take some time. Therefore, considering the aforesaid factual position, without expressing my mind on the merits of the case, regular bail application filed by Kanhaiya Kumar is allowed. He is ordered to be released on bail to the satisfaction of trial Court/Duty Judge concerned.

6. The bail application stands accepted.

Pending application (s), if any, also stands disposed of.

08.04.2024 (AMARJOT BHATTI)
snd JUDGE

Whether speaking/reasoned: Yes/No.
Whether reportable: Yes/No