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128 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-3876-2024 (O&M)
Date of Decision: 12.07.2024

SARWAN

.....PETITIONER

Vs.

STATE OF HARYANA

.....RESPONDENT

CORAM: HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN

Present:- Mr. R.S. Rana, Legal-Aid-Counsel,
for the petitioner.

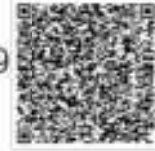
Mr. Amrik Singh Narwal, D.A.G. Haryana.

HARPREET KAUR JEEWAN J.

1. The present petition has been filed under Section 439 Cr.P.C. for grant of regular bail to the petitioner in case bearing FIR No. 192, dated 15.07.2022, under Sections 363 and 366-A of the IPC [Sections 354-A, 376 (2) (n) and 506 of the IPC and Section 6 of the Protection of Children from Sexual Offences, Act, 2012, were added later on], registered at Police Station Rajound, District Kaithal.

2. It is the case of the prosecution that on 14.07.2022, at about 08:00 a.m., the prosecutrix aged about 17½ years, left her house for going to school. However, she did not return back. The matter was report to the police and thereafter, on 23.07.2022, the prosecutrix was recovered from Village Pinana, District Sonipat and her statement under Section 164 Cr.P.C. was recorded. Thereafter, her medical examination was also conducted.

3. Learned counsel for the petitioner *inter alia* contends that there are specific allegations against Sagar, co-accused of the petitioner. The



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petitioner is not even named in the FIR. He has been falsely implicated in this case. The prosecutrix has not stated anything against the petitioner in her statement recorded under Section 164 Cr.P.C. There are material contradictions in the statement of the prosecutrix recorded under Section 164 Cr.P.C. and in the complaint made by her on 09.08.2022. The petitioner is in custody since 13.08.2022. He is a young person. He is the sole member of his family to look after his old age parents who were suffering from various ailments.

4. A status report, dated 16.03.2024 by way of an affidavit of Sh. Lalit Kumar, HPS, Deputy Superintendent of Police, (AEC), Kaithal, along with a copy of the statement of the prosecutrix recorded under Section 164 Cr.P.C., a copy of the MLR of the victim, disclosure statement of the petitioner, a copy of the report of the FSL, Madhuban and the custody certificate of the petitioner, has already been filed by learned State counsel.

5. Learned State counsel has opposed the bail petition, on the ground of gravity of allegations.

6. I have considered the aforesaid facts and circumstances of the present case.

7. The prosecutrix is 17½ years of age and in her statement recorded under Section 164 Cr.P.C (Annexure R-1), she has not levelled any allegations against the petitioner. The relevant portion of the said statement reads as under:-

XXXX XXXX XXXX XXXX

“Q. Tell what you want to say.

*Ans. On 14.07.2022 at 07:00 a.m., I
had left the house. I went to Pipli where Sharwan*



met me. I roamed around with Sharwan in Pipli. Some people were with us. I remained in Pipli for four days. Thereafter, me, Sharwan and his sister Sonu went away to Himachal (Chamba) where we remained for three days. Thereafter, brother and Jija of Sharwan came to take us. I had gone Sharwan with my own sweet will. I do not want to say anything more. I want to live with my Bua Seema.”

8. This fact has been confirmed in the status report that the victim was recovered on 23.07.2022 from Village Pinana. She was not recovered from the custody of the petitioner. As per the status report filed by the investigating agency, subsequent to recording of the statement under Section 164 Cr.P.C., on 08.08.2022, the victim is alleged to have appeared before the SHO and moved an application levelling allegations that the petitioner-Sarwan committed forcible rape upon her, upon which, the offence under Section 376 (2) (n), 354-A and 506 IPC and Section 6 of the POCSO Act were added) and the petitioner was arrested. After moving the said application, her medical examination was conducted on 08.08.2022 and as per the medico-legal examination of the victim (Annexure R-2), no external injury was found. Since there is a delay in conducting the medico-legal examination as such no incriminating evidence was found even in the Forensic Science Laboratory Report. A copy of the said report is submitted by the learned State counsel in Court, which is taken on record.

9. The petitioner is in custody for the last 01 year, 06 months and 22 days, as per the custody certificate, dated 07.03.2024 (Annexure R-5) and the present custody is more than 01 year and 10 months. Despite the



presentation of the final report (*‘challan’*) on 05.11.2022 before the trial Court and framing of the charges on 02.01.2023, only one witness has been examined out of total 19 witnesses. The investigating agency has not made any effort for recording the statement of the victim and the complainant till today. It is further noticed that in her initial statement recorded under Section 164 Cr.P.C., the victim has not levelled any allegations against the petitioner.

10. Keeping in view the facts that final report (*‘challan’*) has been presented; charges have been framed; trial is going to take time and the petitioner is in custody for a long period, without making any comment on the actual merits of the case, the petition is allowed.

11. The petitioner is ordered to be released on regular bail, subject to his furnishing adequate bail bonds and surety to the satisfaction of the trial Court/Duty Magistrate concerned.

12. It is made clear that nothing observed hereinabove will be taken to be an observation on the actual merits of the case, which would be gone into by the learned trial Court wholly on the basis of evidence led/gathered before it.

13. Pending miscellaneous application(s), if any, shall also stand disposed of.

July 12, 2024

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(HARPREET KAUR JEEWAN)

JUDGE

Whether Speaking	Yes
Whether reportable	No