

CRM-M-5539-2024 -1-

245 IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-5539-2024
Date of decision: 29th February, 2024

Shammu Din @ Shamma
...Petitioner(s)
Versus
State of Punjab
...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. G.P.S. Pathania, Advocate for the petitioner.
Mr. A.S. Samra, AAG, Punjab.

MANISHA BATRA, J (ORAL):-

The present petition has been filed under Section 439 of Cr.P.C.
seeking regular bail in FIR mentioned below:-

FIR No.	Dated	Police Station	Sections
31	02.07.2023	Narot Jaimal Singh, District Pathankot	363, 366, 376-D, 376-DA, 120-B of Indian Penal Code, 1860 (for short 'IPC') and Sections 6 and 17 of POCSO Act, 2012

2. Brief facts of the case relevant for the purpose of disposal of this petition are that the aforementioned FIR was registered on the basis of statement recorded by the complainant 'S' (name withheld) alleging therein that his youngest daughter 'N' (name withheld) who was about fourteen and half years old had gone to feed goats at a distance of about two kilometers from his house on 29.06.2023 but did not return home till the evening. He

had made search for her at his own level and then came to know that she had been enticed away by the petitioner on the pretext of performing marriage with her and the co-accused Shammudin @ Jumma, Sadik and Moju were also involved in the kidnapping of his daughter. Initially a case under Sections 363, 366 read with Section 120-B of IPC was registered. Investigation proceedings were initiated. During investigation, the accused Sadik Ali was arrested on the basis of a secret information. He was interrogated and disclosed that the petitioner used to like the victim but family members of the victim wanted to get her married elsewhere and he had eloped with her with their help. On 06.07.2023, the co-accused Moju @ Teg Ali was also apprehended. He suffered disclosure statement and got recovered a motorcycle which was used for the purpose of taking the victim away from his house. During the course of investigation, it was revealed that the victim was admitted in Civil Hospital, Pathankot, on reaching there, it was informed to the investigating officer by the father of the victim that she had managed to escape from the custody of her kidnappers. The accused had subjected her to sexual intercourse against her will. She was even found to be unfit to make statement. Thereafter, her statement was recorded on 21.07.2023 after seeking opinion of doctor with regard to her condition and when she was found to be fit to make statement. On the basis of her statement, offences under Section 376-D of IPC and Section 6 of POCSO Act were added. The present petitioner was arrested. On interrogation, he suffered disclosure statement submitting therein that he was having love relations with the victim. On 29.06.2023, he with the help of co-accused had

taken her away with an intention of marry and had taken her to village Barnoti. He had subjected her to sexual intercourse during the period of their stay for ten days and they had shifted to other places also. He was also medico legally examined. The statement of the prosecutrix was recorded under Section 164 of Cr.P.C., wherein she deposed that she was gang raped by the petitioner as well as co-accused. The offences under Section 376-DA of IPC and Section 17 of POCSO Act were added. After completion of necessary investigation and usual formalities, challan under Section 173 of Cr.P.C. was presented in the Court and presently, the petitioner alongwith co-accused is facing trial for commission of aforementioned offences.

3. The present petition has been filed by the petitioner on the grounds and it has been argued by his counsel that he has been falsely implicated in this case. The victim, her father and mother have not supported the prosecution version in their respective sworn depositions as recorded in the trial Court. The co-accused has been extended benefit of bail. Petitioner is in custody for a period of more than six months. His custodial interrogation is no more required. No useful purpose would be served by keeping him in custody anymore. Hence, it is urged that he deserves to be given concession of bail.

4. The petition has been resisted by learned State counsel in terms of the status report. It is argued by him that in her statement recorded under Section 164 of Cr.P.C., the prosecution has levelled specific allegations of her being kidnapped and raped by the petitioner and co-accused and keeping in view the gravity of offences alleged to be committed by the petitioner, the

petitioner is not entitled to give the concession of bail.

5. I have heard learned counsel for the petitioner as well as learned State counsel at considerable length and have gone through the record carefully.

6. As per the prosecution version, the daughter of the complainant had been enticed away by the petitioner with the help of the co-accused on 29.06.2023 and she was subjected to gang rape/aggravated penetrative sexual assault and the said assault was facilitated by some of the accused. However, the petitioner has placed on record copies of statements of the victim, her father and mother, respectively as recorded before the learned trial Court and a perusal of the same reveals that though the victim deposed about her being kidnapped as on the fateful day but she did not identify the petitioner and the other accused as her kidnappers/abductors and stated that those persons who had kidnapped her were having muffled faces and those very persons had committed gang rape upon her. She did not implicate either the petitioner or the co-accused in the allegations which have been levelled in the FIR and in her statement as recorded under Section 164 of Cr.P.C.. Similarly, the mother and father of the prosecutrix who have appeared as PW-2 and PW-3 respectively before the learned trial Court are also not shown to have supported the prosecution version. Both of them have been declared hostile. On request of learned public prosecutor and it is revealed that they were allowed to be cross- examined by learned public prosecutor and were cross-examined in detail but have still not supported the prosecution version. Keeping in view the nature of the evidence that has

come on record, the period of incarceration of the petitioner and the fact that the trial is likely to take time but without meaning to make any comment upon the merits of the case, less it may prejudice the trial, I am of the opinion that the petition deserves to be allowed, accordingly, the same is allowed and the petitioner is ordered to be released on bail subject to his furnishing personal/surety bonds to the satisfaction of the Chief Judicial Magistrate/ Duty Magistrate concerned.

7. Since the main petition has been allowed, pending application if any is rendered infructuous.

[MANISHA BATRA]
JUDGE

29th February, 2024
Parveen Sharma

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| 1. Whether speaking/ reasoned | : | Yes / No |
| 2. Whether reportable | : | Yes / No |