



CRM-M-4252-2023 (O&M) -1-

319 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-4252-2023 (O&M)
Date of Decision: 06.05.2024

KULDEEP

.....PETITIONER

Vs.

STATE OF HARYANA

.....RESPONDENT

CORAM: HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN

Present:- Mr. Raman Chawla, Advocate, for the petitioner.
Mr. Kirpal Singh Thakur, A.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. 298 dated 27.07.2021, under Sections 315, 318, 376, 376 (2) (N), 376(D) and 506 of the Indian Penal Code, 1860 (for short '*the IPC*'), Section 3, 4 and 5 of the MTP Act and Section 3 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short '*the Act of 1989*') registered at Police Station Agroha, District Hisar.

2. A status report, dated 26.04.2024 by way of an affidavit of Sh. Wazir Singh, HPS, Deputy Superintendent of Police, Law & Order, Hisar, has already been filed by learned State counsel. The same is taken on record.

2.1 The custody certificate, dated 03.05.2024, has also been filed on behalf of the respondent-State, which is also taken on record. As per the custody certificate, the petitioner has undergone 02 years, 08 months and 19 days of actual custody.

3. Learned counsel for the petitioner *inter alia* contends that the petitioner is in custody since 14.08.2021 and as per the FIR there are no



CRM-M-4252-2023 (O&M) -2-

allegations that the petitioner has committed rape upon the prosecutrix. Even as per the history recorded by the Court at the time of conducting the medical examination of the prosecutrix, she has alleged having a relationship with the co-accused. No DNA report has been received raising any incriminating evidence against the petitioner.

4. On the other hand, learned State counsel has opposed the present petition, on the ground of gravity of the offence and submits that the allegations are very serious in nature.

5. I have considered the aforesaid contentions and have gone through the paper-book carefully.

6. As per the facts on record, upon recovery of a fetus in the toilet of the Primary Health Centre, an intimation was sent to the police whereby the investigating officer reached the hospital who was informed that an undeveloped fetus was found while clearing the toilet. Initially, the case under Section 318 IPC was registered on 27.07.2021. During investigation, on 29.07.2021, the prosecutrix and her aunt came in the hospital. The police party was called and statement of the prosecutrix was recorded. As per the version of the prosecutrix in the said statement Satbir (co-accused of the petitioner) had committed rape upon the prosecutrix against her wishes. She has specifically stated that on 10.03.2021, Satbir took her in a hotel and forcibly committed wrong act with her three times against her wishes and threatened to kill her if she discloses to anyone. Thereafter, she became pregnant and she told this fact to Satbir in May 2021. Satbir brought tablets for her and after consuming the said tablets, she started vomiting and on 22.07.2021 due to severe pain in her abdomen she went to the hospital along



CRM-M-4252-2023 (O&M) -3-

with her aunt where she was treated and when she went for urination in the toilet, the child was aborted and fetus went in the sewerage.

7. As per the status report, dated 25.01.2024, filed by way of an affidavit of Sh. Sajjan Kumar, HPS, Deputy Superintendent of Police, Law & Order, Hisar, on 30.07.2021, the statement of the prosecutrix was recorded under Section 164 Cr.P.C. wherein she categorically alleged that the present petitioner along with Manoj and Satbir had raped her and she was given threats that her brother would be killed. The relevant portion of the said statement reads as under:-

XXXX XXXX XXXX XXXX

“Question: What do you want to say?

Answer: These three (Manoj, Satbir and Kuldeep) raped me and threatened me even after I refused. These people used to say that if you told anything at home, they would kill her brother. That’s why I was scared. Then I told these people that I am pregnant and they said that I am joking. Then Satbir brought me the bill. Then I took that pill. Then suddenly I got pain in my stomach and urination stopped. Then I went to the Government hospital in my village and they installed a urine pipe. And when I went to the bathroom, the fetus fell into the toilet. I did not tell anyone about this and went to my home. Then the doctor from the Government hospital called my mother and told her about the fetus. Then the next date she went to the hospital and told the whole story when asked by the doctor.”

XXXX XXXX XXXX XXXX



CRM-M-4252-2023 (O&M) -4-

8. Learned counsel for the State has informed that as per entry record of the hotel collected during investigation, the present petitioner Kuldeep had also booked the room apart from Satbir. The statement of the prosecutrix (PW-1) has been recorded during the trial. She has supported her version given in statement recorded under Section 164 Cr.P.C.

9. On 13.12.2023, learned counsel for the petitioner filed a DNA report, dated 19.04.2023 whereby it was noticed that there is no amplification of DNA in source of item No. 2 (Bones) which is necessary to compare with DNA profile of blood samples of accused. The State was directed to verify whether any steps have been taken thereafter for conducting DNA test. In pursuance to the said order, the State has filed the status report, dated 26.04.2024, which has been taken on record today itself. As per the said status report, a portion of sample was left in the jar which is visible at the bottom of the jar as per the report of the Senior Scientific Officer, Madhuban, Karnal (Annexure R-1). The re-examination of the available sample can be done. The relevant portion reads as under:-

"3. That in compliance of order dated 20.04.2024, it is submitted that the sample of femur bones of fetus is preserved and there is possibility for conducting re-DNA test. That for opinion of conducting re-DNA test, investigating officer visited the DNA Division, FSF (H), Madhuban Karnal on dated 24.04.2024 with Parcel No. 2, a plastic jar in which two small bones of fetus was sealed before the examination. Dr. Surjit Kumar, Senior Scientific Officer, DNA Division, FSF (H), Madhuban Karnal opined vide letter No. 310 dated 24.04.2024 that "during examination a portion of sample was left in jar which is visible at the bottom of the jar". If the Hon'ble High Court



CRM-M-4252-2023 (O&M) -5-

ordered to re-examination of available sample, then investigating agency can try to re-examination. Copy of letter of DNA Division, FSL (H), Madhuban, Karnal is annexed as Annexure R-1.”

10. Keeping in view the facts and circumstances of this case and also considering the fact that there are specific allegations of committing rape upon the prosecutrix by more than one person and threatening to kill her brother, the offence alleged to have been committed by the petitioner is serious in nature. There are also allegations of the Act of 1989 against the petitioner and his co-accused. Keeping in view the gravity of the allegations, it is not a fit case for releasing the petitioner on regular bail.

11. Consequently, the present petition stands dismissed.

12. However, the trial Court shall consider the request of the prosecution for conducting re-examination of the DNA test, in view of the statements made by the State in the affidavit, dated 26.04.2024, and also in view of the letter of the Senior Scientific Officer, Madhuban, Karnal (Annexure R-1)

13. However, it is made clear that nothing expressed hereinabove would be construed to be an expression of opinion on merits of the case.

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

May 06, 2024
nitin

(HARPREET KAUR JEEWAN)
JUDGE

Whether Speaking	Yes
Whether reportable	No