

2024:PHHC: 018663

206 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-6087-2024

Date of Decision : 09.02.2024

Sahil

...Petitioner

Versus

State of Haryana

....Respondent

BEFORE: HON'BLE MS. JUSTICE NIDHI GUPTA

Present: Ms. Sehej Sandhawalia, Advocate for the petitioner.

Mr. Surinder Singh Dagar, DAG, Haryana.

NIDHI GUPTA, J. (ORAL)

Prayer in this first petition filed under Section 439 Cr.P.C. is for grant of regular bail to the petitioner during the pendency of the trial in case FIR No. 01 dated 02.01.2023 registered under Section 376 IPC, 1860 and Section 6 of POCSO Act at Police Station Women, Kaithal.

The present FIR (Annexure P-1) was registered on the basis of statement of victim herself which reads as follows:

“At this time one complaint is presented by Komal daughter of Satnam Singh resident of Devi Garh Road, Balraj Nagar Kaithal today by coming at police station, the contents of which are as follows: Respected SHO Sir, Police Station Women Police Station, Kaithal. Complaint against Sahil Mob No: 9812221312, Balraj Nagar, Kaithal for registering a case against him. Sir, I am resident of Devigarh Road, Balraj Nagar Gali No.4 Kaithal, I am 17 years old DOB: 01.04.2005. That I had developed friendship with one Sahil on Instagram on 24.11.2022. That on 16.12.2022 the said person by alluring me called to me a café at Karnal Road and misbehaved me with and developed physical relation with me because of which I had become pregnant. Medical reports are attached. It is requested to take necessary action against the accused and case be registered against him for raping me. Sd/- Komal daughter of Satnam Singh resident of Devi Garh Road, Balraj Nagar Kaithal. Mob 97290-75692 dated 02.01.2023. From the allegations offence under Section 6 of POCSO Act, 2012 and

Section 376 IPC is made out and case is registered and copy of FIR is sent to higher officials for report. Special reports sent to Area Magistrate and Superintendent of Police through email."

Learned counsel for the petitioner, *inter alia*, submits that at the time of incident, the victim was 17 years of age. It is contended that the relationship between the petitioner and the victim was consensual in nature and the petitioner himself was only about 20 years of age at the time of incident. Learned counsel further submits that as per the FIR the date of alleged incident was 16.12.2022, however, FIR has been lodged on 02.01.2023. Therefore, there is an unexplained delay of 15 to 16 days in registration of the FIR.

Learned counsel for the petitioner further contends that the allegations made in the FIR that the victim was impregnated by the petitioner on the face of it appears to be false as a perusal of the medical report dated 06.01.2023 (mentioned by the victim herself in the FIR and appended herein as Annexure P-2) reveals that on the said date, age of the foetus was 5 weeks and 2-3 days. It is submitted that even if the allegation of victim that the petitioner had raped her on 16.12.2022 is believed then too the age of the foetus could not have been more than 3 weeks. Learned counsel further contends that the victim already stands examined before the learned court below and has turned hostile; and even her father and mother have also been examined before the court below, who have also turned hostile in the matter.

Notice of motion.

Mr. Surinder Singh Dagar, DAG, Haryana, accepts notice on behalf of the respondent-State and has filed the custody certificate dated 08.02.2024 in Court today. The same is taken on record. Copy thereof is supplied to the counsel opposite.

As per the custody certificate, the petitioner has undergone custody as under-trial including remission for a period of 01 year, 01 month and 3 days. Learned State counsel opposes the prayer for grant of bail submitting that since the victim was admittedly a minor at the time of incident, her consent is immaterial; as also the DNA report of the foetus is still awaited in the matter.

I have heard learned counsel for the parties and gone through the case file carefully.

Without commenting on the merits of the case, however, keeping in view the totality of facts and circumstances of the case, including the fact that the trial of the case is likely to consume considerable time and keeping in view the custodial period of the petitioner; and the fact that there is no other case pending against him, his further custody may not be justified. Therefore, without meaning any expression of opinion on the merits of the case, it is ordered that the petitioner-Sahil son of Sh. Krishan be released on regular bail subject to his furnishing requisite bail bonds/surety bonds to the satisfaction of the trial Court/Duty Magistrate, concerned.

The petition is allowed.

February 09, 2024
ps

(NIDHI GUPTA)
JUDGE

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