

Neutral Citation No. 2024:PHHC: 074479

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IN THE HIGH COURT FOR THE STATES OF PUNJAB AND  
HARYANA AT CHANDIGARH

218

CRM-M-6948-2024 (O&M)  
Date of decision: 24.05.2024

Kamal

...Petitioner

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Deepkaran Dalal, Advocate  
For the petitioner.

Mr. Arjun Lakhanpal, Addl. A.G., Haryana.

Ms. Kuljeet Kaur, Advocate  
For respondent No. 2.

MANISHA BATRA, J. (Oral)

1. This petition has been filed by the petitioner under Section 439 Cr.P.C. seeking regular bail in case bearing FIR No. 334 dated 26.11.2022, registered under 363 of IPC and Section 4 of the POCSO Act, 2012 at Police Station Industrial Sector 7, Manesar, District Gurugram.
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 a complaint submitted by the complainant 'M' (*name withheld*) alleging therein

Neutral Citation No. 2024:PHHC: 074479

that the victim 'D' (*name withheld*), who was her daughter, had gone missing from the house since 05:00 PM on 25.11.2022. They had made search for her but could not find her. While giving description of clothing, appearance etc. of the victim, he prayed for searching her. Initially, a case under Section 363 of IPC was registered and investigation proceedings were initiated. During the course of investigation, the victim was recovered from village Naharpur. She was medico-legally examined. Her statement under Section 164 of Cr.P.C. was recorded, wherein she stated that she knew the petitioner from the last two months and used to meet him after getting free from school and also used to talk to him. She further stated that on 25.11.2022, she had gone to meet him on his plot, whereby he had committed wrong act with her without her consent. Offence under Section 4 of the POCSO Act was also added. The petitioner was arrested on 28.11.2022. His medical examination was also conducted. 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 is facing trial for commission of aforesaid mentioned offences. He had moved an application before the trial Court for grant of regular bail but the same had been dismissed, vide order dated 19.10.2023.

3. The present petition has been filed by the petitioner on the grounds and his counsel has argued that he has been falsely implicated in this case. In fact, the petitioner and the victim were friends and he has not committed sexual assault upon the victim. He is in custody since 28.11.2022. The victim, in her sworn deposition recorded before the trial Court, has totally exonerated the petitioner from the allegations levelled in the FIR and has

Neutral Citation No. 2024:PHHC: 074479

stated that he has not committed rape upon her. She even stated that her statement as recorded under Section 164 of Cr.P.C. was made under the pressure of her neighbours. Even the complainant, who is mother of the victim, has stated in her sworn deposition that the petitioner had neither kidnapped the victim nor had committed rape upon her. It is further argued that in view of the evidence forthcoming on record in the form of the testimonies of the victim as well as her mother, who have not supported the prosecution version, no useful purpose would be served by keeping the petitioner in custody anymore. The trial is likely to take time. Hence, it is prayed that the present petition deserves to be allowed.

4. *Per contra*, learned State counsel has argued that there are serious allegations against the petitioner. There will be no undue delay in conclusion of trial. Therefore, he has argued that the present petition is liable to be dismissed.

5. I have heard learned counsel for the parties and have also gone through the material placed on record very carefully.

6. The petitioner is alleged to have enticed away the victim on 25.11.2022 from the custody of her lawful guardians and is further alleged to have sexually assaulted her. The petitioner is in custody since 28.11.2022. A perusal of the copies of the sworn depositions of the victim as well as the complainant i.e. her mother, which have been placed on record as Annexures P-2 and P-3, reveals that they have totally exonerated the petitioner from the subject offences and on the request of learned Public Prosecutor, both of them have been declared hostile. Keeping in view the nature of evidence which has

Neutral Citation No. 2024:PHHC: 074479

on record in the form of testimonies of the victim as well as the complaint, who are the star witnesses of the prosecution, the period of incarceration of the petitioner and attendant facts and circumstances of the case, I am of the considered opinion that no useful purpose would be served by keeping the petitioner in custody anymore.

7. Accordingly, the present petition is allowed and the petitioner is ordered to be released on regular bail, subject to his furnishing personal/surety bonds to the satisfaction of the trial Court/Duty Magistrate concerned.

8. It is made clear that any observation made herein above is only for the purpose of deciding the present petition and the same shall have no bearing on the merits of the case.

24.05.2024

Waseem Ansari

(MANISHA BATRA)  
JUDGE

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|---------------------------|--------|
| Whether speaking/reasoned | Yes/No |
| Whether reportable        | Yes/No |