



305 IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-7582-2024
Date of decision: 8th May, 2024

Saurav @ Gaurav
...Petitioner(s)
Versus
State of Haryana
...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Ajeet Pal Singh Pakka, Advocate for the petitioner.
Mr. Neeraj Poswal, AAG, Haryana.

MANISHA BATRA, J (ORAL):-

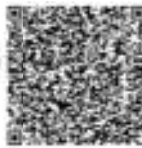
The present petition has been filed under Section 439 of Cr.P.C.
seeking regular bail in FIR mentioned below:-

FIR No.	Date	Police Station	Sections
949	22.10.2022	Civil Lines, District Sirsa	376(3), 376-DA and 506 of Indian Penal Code, 1860 (for short 'IPC') and Section 6 of Protection of Children from Sexual Offences Act, 2012 (for short 'POCSO Act')

2. Brief facts of the case relevant for the purpose of disposal of this petition are that on 21.10.2022 at about 7:40 PM, the victim 'M' (name withheld) reached at the police station along with her mother 'K' (name withheld) mother and got recorded her statement that she was fifteen years old. She used to do mopping and cleaning work in the houses of others sometimes. On the same day, she had gone to the house of one Hans Raj



Saini for cleaning his house where the present petitioner had rebuked her for not working properly and while crying she had come back to her house. She stated that when her mother asked her, then out of anger, she had disclosed to her that the petitioner had committed wrong act with her, though actually nothing of that had happened but her mother had brought her to the police station. She further recorded that she had levelled false allegations against the petitioner on being instigated by someone. A DD entry was made on the basis of her statement. However, on 22.10.2022, the prosecutrix along with her mother again came to the police station and got recorded her statement that on 21.10.2022 at about 10:00 AM, while she was going for doing cleaning work in the house of someone, she had been stopped by the accused Mamta whose house was on the way. Mamta told her to go inside her house and to bring a glass of water. On going inside, she found the petitioner to be present therein. He pushed her on the cot and by bolting the door of the room from inside, he committed rape upon her and than extended threats to kill her, if she disclosed about the incident to anyone. She raised alarm and then accused Mamta had reached there but she too extended beatings to her and then left the prosecutrix outside her home while extending threats to her. She also recorded that the previous statement made by her on 21.10.2022 was not her correct statement. On the basis of this statement, initially a case under Sections 376(3), 323 and 506 of IPC read with Section 6 of POCSO Act was registered. The victim was medically examined. Her statement under Section 164 of Cr.P.C. was also recorded. The petitioner was arrested on 29.10.2022. Offences under Sections 376DA and 506 of IPC and Section



4 of POCSO Act were included whereas offences under Sections 376-DA of IPC and Section 6 of POCSO Act were deleted during the course of investigation. It is also revealed that accused Mamta was booked for commission of offences punishable under Sections 323 and 506 of IPC only. 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 the commission of the aforementioned offences. He had filed an application for grant of bail before the learned trial Court which was dismissed vide order dated 30.10.2023.

3. The present petition has been filed by the petitioner on the grounds and it is argued by his counsel that he has been falsely implicated in this case. He is in custody since 29.10.2022. In her initial version as recorded before the police, the allegations as levelled by the victim against petitioner were that he had scolded her for not working properly. She had made material improvements in her version as recorded on 22.10.2022 and had implicated him in this case on the allegation of ravishing her. Not only the victim but her mother had made different versions at different points of time. Their statements were totally improbable, unnatural were not worthy of credence. The victim has since been examined. The medical evidence produced on record does not connect the petitioner with the commission of subject offences. There are no chances of petitioner's intimidating the material witnesses as they have already been examined. There are no chances of his absconding as he is a permanent abode. No useful purpose would be served by keeping him in custody anymore. Trial is likely to take

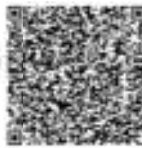


time. He is a young boy of only 21 years of age. With these broad submissions, it is urged that he deserves to be released on bail.

4. *Per contra*, learned State counsel has argued that there are serious allegations against the petitioner. Some of the material witnesses are yet to be examined. There are chances of petitioner's intimidating such witnesses and absconding, if extended benefit of bail. The period of his incarceration is not a sufficient ground to extend benefit of bail to him. Therefore, it is argued that the petition does not deserve to be allowed.

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 allegations, on 21.10.2022, the victim along with her mother had gone to the concerned police station and had recorded her statement to the effect that on the same day, she had gone for doing cleaning work in the house of one Hans Raj Saini where the present petitioner had scolded her for not doing her job properly and she came to her home crying and out of anger, she disclosed to her mother that the petitioner had committed wrong act with her, whereas nothing of that sort had happened to her. She stated that her mother had brought to the police station and as her anger had subsided, therefore, she was recording her statement that nothing wrong had been committed by the petitioner. However, on 22.10.2022, she is again shown to have recorded a totally different statement making allegations that on 21.10.2022, while she was going for doing some household work, she was called by the co-accused Mamta who was standing



outside her house and was asked to bring a glass of water from inside her house and on reaching there, she found the petitioner present inside the house who had ravished her. In her statement recorded under Section 164 of Cr.P.C. (exhibited as Ex. P-4 before the learned trial Court) she is shown to have stated that in the morning, she was going to some shop when she was called by accused Mamta inside her house, had bolted the room from outside wherein the petitioner had ravished her. Certified copy of her sworn deposition has also been placed on record wherein she is shown to have given a different version to the effect that the accused Mamta who was standing at the gate of one Muskan and called her and asked her for bring a glass of water from inside the house of the said Muskan, wherein the petitioner had committed rape upon her. In this manner, the prosecutrix is shown to have given different statements at different points of time. However, at this stage of deciding plea for grant of bail of the petitioner, neither it is feasible nor appropriate for this Court to go into the question of veracity of the statements recorded by the prosecutrix at different stages of investigation and trial but the fact still remains that some major improvements in her statements are *prima facie*, apparent from the record. The petitioner is in custody since 29.10.2022. The trial is likely to take time. There is no question of his intimidating the prosecutrix, since she has already been examined. In view of the facts and circumstances of the case as discussed above and considering the nature of the allegations made against the petitioner at the initial stage and then at the time of lodging of FIR but without discussing the evidence in detail, this Court is of the opinion that it



is a fit case to exercise the discretion and enlarge the petitioner on regular bail. Hence the petition 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 and subject to the condition that he will not misuse the concession of bail so granted, will not try to contact with the prosecutrix or her family members and will not even visit in the vicinity of residence of the prosecutrix and further, that he will not leave the country without prior permission of the trial Court.

7. It is clarified that observations made hereinabove shall not be construed as an expression of opinion on the merits of the case.
8. Since the main petition has been allowed, pending application if any is rendered infructuous.

[MANISHA BATRA]
JUDGE

8th May, 2024
Parveen Sharma

1. Whether speaking/ reasoned

:

Yes
2. Whether reportable

:

Yes