

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

210

Criminal Misc. No. M-9403-2024

Date of decision :-27.02.2024

Narender

.....Petitioner

Versus

State of Haryana and another

.....Respondents

CORAM:- HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Siddharth Sihag, Advocate
for the petitioner.

NIDHI GUPTA J. (Oral)

Prayer in this first petition is for grant of regular bail to the petitioner in case FIR No.0059 dated 10.02.2022 (Annexure P-1) under Sections 363, 366-A, 376(2)(n) IPC and Section 6 of the POCSO Act, 2012, registered at Police Station Julana, District Jind.

The present FIR was registered on the complaint moved by the complainant/father of victim to the effect that on 09.02.2022 at about 9.00 p.m., his daughter/victim Nisha, aged 16 years 4 months went to sleep in his house as usual and on 10.02.2022, at about 6.00 a.m., when they woke up, he did not find his daughter/victim in her cot. Thereafter, he alongwith his family members and relatives tried to search for the victim at their own level but to no avail.

Learned counsel for the petitioner *inter alia* submits that the victim/respondent No.2 herein and the petitioner were in a consensual relationship. After attaining the age of majority, the victim

and the petitioner solemnized marriage on 17.09.2023 as is evident from the Marriage Certificate dated 17.9.2023 (Annexure P-3). It is submitted that vide order dated 10.4.2023 (Annexure P-2) the petitioner was earlier released on interim bail by the learned Sessions Court only until the DNA Report was received; however, the order granting interim bail was cancelled on 21.9.2023 (Annexure P-6) as the petitioner had missed three dates before the learned trial Court. Learned counsel submits that the petitioner missed three hearings before the learned trial Court as his father had expired on 24.8.2023 as is evident from the Death Certificate (Annexure P-5). The dates missed by the petitioner were 13.7.2023, 05.8.2023 and 02.09.2023. It is submitted that thereafter from 21.09.2023 the petitioner is in custody; and he has remained in custody as undertrial for a total period of over one year and six months. It is submitted that the petitioner has also filed a petition, bearing CRM-M-57681-2023 for quashing of FIR in question, in which notice has been issued by co-ordinate Bench of this Court on 16.11.2023 (Annexure P-7) and vide order dated 02.12.2023 (Annexure P-8) the co-ordinate Bench has directed the trial Court to adjourn the hearing of the trial pending before it, beyond the date fixed by that Court.

Notice of motion.

On asking of the Court, Mr. Ranvir Singh Arya, Addl. A.G., Haryana accepts notice on behalf of respondent No.1-State and states the custody certificate in the present case is not available today. However, he admits that the petitioner has been in custody as undertrial for a period of approximately one year and six months. Learned

counsel States that at the time of incident, admittedly the victim was a minor and therefore her consent is immaterial. Learned counsel further opposes the prayer of the petitioner for grant of regular bail on the ground that the FSL Report and the DNA Report in the present case are positive. It is further informed that the trial is at the fag end since all the prosecution witnesses in the case have already been examined and for adducing the defence evidence, the matter is fixed for 12.7.2024.

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 as vide order dated 02.12.2023 (Annexure P-8) passed by the co-ordinate Bench of this Court, the trial Court has been directed to adjourn the hearing of the trial beyond the date fixed by that Court; and keeping in view the custodial period of the petitioner, his further custody may not be justified. Accordingly, without meaning any expression of opinion on the merits of the case, it is ordered that the petitioner-Narender s/o Maha Singh 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 27, 2024
Vijay Asija

(NIDHI GUPTA)
JUDGE

Whether speaking/reasoned Yes / No
Whether Reportable Yes / No

