

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

209

Criminal Misc. No. M-9313-2024

Date of decision :-27.02.2024

Ashish @ Nepali

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM:- HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Vivek Sharma, Advocate
for the petitioner.

NIDHI GUPTA J. (Oral)

Prayer in this 1st petition is for grant of regular bail to the petitioner in case FIR No.31 dated 19.1.2023 (Annexure P-1), under Sections 363 and 366-A IPC (Section 376(DA), 328 IPC and Section 6 of Protection of Children from Sexual Offence Act, 2012 added later on, on 23.2.2024), registered at Police Station Derabassi, District SAS Nagar (Mohali).

The FIR was registered on the basis of statement of the complainant/father of the victim, which reads as follows :-

“.....Stated that I am a resident of the said address and I work as laborer, I have 04 children, out of which 2 girls and 2 boys, my eldest girl Suneha whose date of birth is 06-07-2007, according to which my daughter Suneha's age is about 15 years 06 months. My younger daughter Sania is about 11 years old, my younger son Shivam is 08 years old and my youngest boy's name is Yash

whose age is about 5 years. My wife Sapna who works as a private worker at RM Fabrics, Village Morthikari. My elder daughter Suneha who has studied up to 5th standard, who now used to stay at home and do domestic work. On 18-01-2023, my wife Sapna and I went to work as usual and my three children also went to their schools and my daughter Sureha was home alone. At around 02:00. P.M. I called my daughter Sneha but she did not pick up my phone. When my wife Sapna returned home after leaving work at around 05:00 in the evening, she saw that my daughter Suneha was not present at home. My wife asked her little girl Sania about Sneha, she told that when we came home from school, Suneha was not at home, then when I came around 08:45 PM, my wife told me that the Suneha is not at home, then I and my wife Sapna searched a lot in the hope of finding my girl Suneha, but I did not get any information about my girl Suneha. I inquired about my girl Suneha from my relatives but she did not go to my relatives, so far I have been looking for my girl Suneha, but I did not get any information about my girl Suneha, I suspect that some unknown person has taken my girl on the pretext of marriage, I suspect that the boy living in our neighborhood Kannu and Kannu's mother are involved in driving away my daughter Sneha. But Kannu and her mother are only present at home. Please search my girl Suneha and take appropriate legal action against the unknown person for taking away my girl Suneha. Today I was coming to report to you, I wrote a statement to you, and I heard it to be true.....”

Learned counsel for the petitioner *inter alia* submits that at the time of occurrence, the victim was about 16 years of age, whereas the petitioner was about 22 years of age. Learned counsel for the petitioner submits that the petitioner was neither named in the FIR (Annexure P-1) nor in the statement made by the victim under Section 164 Cr.P.C. (Annexure P-2). It is submitted that it is only in the report under Section 173 Cr.P.C. (Annexure P-3) filed by the police that the petitioner has been identified by the prosecutrix by saying that it was the petitioner who had taken her on the pretext of marriage, on 18.01.2023. Learned counsel for the petitioner contends that if it was the petitioner, who had abducted the prosecutrix on 18.1.2023, then why was this fact not mentioned in the FIR or in the statement under Section 164 Cr.P.C. Learned counsel further states that even as per the MLR dated 20.01.2023 (Annexure P-5) no external injuries were found on the person of the prosecutrix; neither was the hymen found to be ruptured and no abnormality was also detected. It is submitted that even as per the FSL/DNA Report dated 31.7.2023 (Annexure P-4) there is no evidence against the petitioner as it is specifically mentioned in the conclusion part of the said report that “.....*no male DNA is recovered to ascertain the presence of genetic contribution of Ashish @ Nepali on these exhibits of Sneha.*” It is accordingly contended that there is no medical evidence against the petitioner. Learned counsel further submits that the petitioner has been in custody for over one year and charges have not yet been framed in the matter, therefore, the trial will take long time to conclude. It is submitted that even in the report under Section 173 Cr.P.C. (Annexure P-3) it has also been mentioned

that the mobile phone of the prosecutrix was recovered from the mother of the petitioner. Learned counsel submits that in view of the aforesaid facts, the petitioner be released on regular bail.

Notice of motion.

On asking of the Court, Ms. Aakanksha Gupta, AAG, Punjab accepts notice on behalf of respondent-State. Learned State counsel has filed the custody certificate dated 26.2.2024 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 been in custody as undertrial for 01 year and 29 days and he is also involved in one another case i.e. FIR No.297 dated 14.9.2023, under Section 52-A/42 Prison Act, registered at Police Station Tripuri. Learned counsel for the State vehemently opposes the prayer of the petitioner for grant of regular bail and submits that in the report under Section 173 Cr.P.C. (Annexure P-3), the petitioner has been duly identified by the prosecutrix. It is further submitted that even in her statement under Section 164 Cr.P.C. (Annexure P-2), the prosecutrix has stated that “...*There was someone else.....*” alongwith the other co-accused. It is, however, admitted that the other co-accused, although named and identified by the prosecutrix, have not yet been arrested and charges have not yet been framed 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 as the charges have not yet been framed; 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-Ashish @ Nepali s/o Shri Bisan 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