

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

206

CRM-M-10367-2024

Date of Decision: 04.03.2024

Gulfan

.... Petitioner

Versus

State of U.T. Chandigarh

.... Respondent

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present: - Mr. Jagdish Manchanda, Advocate for the petitioner.

Mr. Manish Bansal, P.P. for U.T. Chandigarh.

NIDHI GUPTA, J. (ORAL)

The petitioner has filed the present 1st petition under Section 439 of the Code of Criminal Procedure, 1973, for grant of regular bail in case FIR No. 67 dated 03.11.2022 registered under Sections 363, 376(2)(n) and 376(3) IPC and Section 6 of the Protection of Children from Sexual Offences Act, 2012 at Police Station Sector-19, Chandigarh.

The present FIR has been registered on the basis of statement of complainant/father of the victim, which reads as under:-

“.....Statement of Gulsher s/o Satibi, resident of Village Barategadar, Tehsil Badiyu, Uttar Pradesh, aged 60 years stated that I am the permanent resident of the abovementioned address and these days, resident of 283, Sec. 21A, Chandigarh and doing the messon work in this kothi and residing in this kothi with my family. I have three sons and one daughter. My daughter name is xxxx and her age is about 14 years. Yesterday, we were busy in our labour work, then on previous date i.e. 02.11.2022, my daughter xxxx without informing went somewhere at about 4.00 pm, when we checked then Rs.25,000/- and golden earrings have taken by my daughter xxxx. Till today, we were trying on our level; but we did not receive any clue of our daughter. I am

suspicious that my minor daughter xxxx has been allured by some unknown person. Kindly suitable action be taken and find out my daughter, whose identity is that Name: xxxx aged about 14 years, Colour: Fair, Height: 44, who has worn suit of coffee colour, worn slipper in foot, speaks Hindi. I have recorded my statement, which has been read over to me, which is correct...”

Learned counsel for the petitioner, *inter alia*, submits that in the FIR, age of the victim has been mentioned as 14 years, however, as per the bone ossification test conducted upon the victim, her age was said to be between 17 to 19 years; and as per dental determination, age of the victim was determined between 16 to 17 years. It is submitted that the victim in her statements recorded under Sections 164 and 161 Cr.P.C., has not supported the case of the prosecution and stated that she had gone with the petitioner with her own sweet will and accord. It is further contended that now the victim is married to someone else and no witness has been examined by the trial Court, so far. Since, the past 7-8 months, neither the complainant, nor the victim appeared before the trial Court for recording their statements. The petitioner has been in custody since 08.11.2022. No no useful purpose will be served by further detention of the petitioner in custody. Thus, it is prayed that the present petition may be allowed and the petitioner be released on regular bail.

Learned counsel for the State has filed custody certificate dated 04.03.2024, which is taken on record, as per which the petitioner has been in custody as an undertrial for a period of 01 year, 03 months and 26 days. As per custody certificate, there is no other case against the petitioner. Learned counsel State vehemently opposes the prayer for grant of regular bail to the petitioner. On instructions from ASI Ashok Kumar, learned counsel for the State informs that out of total 17

prosecution witnesses, 14 have already been examined by the trial Court including the complainant and the victim. However, learned counsel for the State submits that he has no instructions, as to whether the complainant or the victim in their testimonies have supported the prosecution case or not.

Having heard learned counsel for the parties, but without commenting on merits of the case, however, keeping in view the totality of the facts and circumstances of the case and the custody period undergone by the petitioner including the fact that the custody certificate reveals that there is no other case against the petitioner; moreover, material witnesses i.e. the complainant and victim stand examined; and out of total 17 prosecution witnesses, 14 witnesses have already been examined till date, therefore, conclusion of trial will take considerable time and no useful purpose would be served by further detention of the petitioner. Thus, the present petition is **allowed**.

The petitioner-Gulfan S/o Ishtaq, is ordered to be released on regular bail on his furnishing bail/surety bonds to the satisfaction of the trial Court/Chief Judicial Magistrate/Duty Magistrate, concerned.

However, it is made clear that nothing stated above shall be construed as an expression of opinion on the merits of the case.

04.03.2024
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(NIDHI GUPTA)
JUDGE

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