



CRM-M-13655-2024 (O&amp;M)

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

CRM-M-13655-2024 (O&amp;M)

Reserved on: 20.09.2024

Date of Pronouncement:-18.11.2024

MOHIT

.....PETITIONER

Vs.

STATE OF HARYANA

...RESPONDENT

CORAM: HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN

(As on the reserved date)

Present: Mr. Ravinder Chaudhary, Advocate, for the petitioner.

Mr. Kirpal Singh Thakur, A.A.G., Haryana,  
assisted by ASI Ashok Kumar.

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HARPREET KAUR JEEWAN, J.

1. The present petition has been filed under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail to the petitioner in case bearing FIR No.156 dated 26.05.2022, under Sections 376(2)(n), 376(3), 450 and 506 of the Indian Penal Code, 1860, (for short '*the IPC*') and Section 6 of the Protection of Children from Sexual Offences Act, 2012 (for short '*the POCSO Act*') registered at Police Station Munak, District Karnal.

2. As per the prosecution case, the FIR was registered at the instance of mother of the victim with the allegation that petitioner Mohit has committed rape upon her daughter and he also threatened to kill her as



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well as her family members in case she discloses the occurrence to anybody.

3. Learned counsel for the petitioner *inter alia* contends that the petitioner has been falsely implicated in this case and he is in custody since 29.05.2022. He further contends that the statements of the victim (PW-1) as well as her mother/complainant (PW-4) have already been recorded during trial. Referring to the DNA report of Forensic Science Laboratory, Madhuban (FSL) dated 25.01.2024, it is contended that DNA profile of the foetus does not match with the blood sample of the petitioner; hence, the petitioner is not biologically related to the foetus. The investigation is complete and final report under Section 173 Cr.P.C. has been presented before the trial Court.

3.1 In support of his contentions, learned counsel for the petitioner has relied upon the judgment of the High Court of Judicature at Bombay bench At Aurangabad in Suresh vs. State of Maharashtra (Criminal Appeal No. 306 of 2016), decided on 15.03.2023.

4. On the other hand, learned State counsel has opposed the bail petition on the ground of gravity of allegations against the petitioner. Learned State counsel has informed that out of total 17 witnesses, 05 witnesses, including the victim (PW-1) and her mother (PW-4), have been examined and 12 witnesses are yet to be examined. Learned State counsel has also filed custody certificate dated 19.09.2024 of the petitioner, reflecting his period of custody as 02 years, 03 months and 20 days, which



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is taken on record. As per the custody certificate, there is no history of any other case pending against the petitioner.

5. I have heard the learned counsel for the parties and perused the paper-book.

6. The allegations against the petitioner are serious in nature. The case was registered at the instance of the mother of the victim. The investigating officer reached the hospital upon receiving an information with regard to the admission of the child victim. The mother of the victim informed that the child-victim was suffering from abdominal pain. The petitioner is a neighbourer of the victim who is alleged to have sexually exploited the victim. The petitioner is also alleged to have threatened the victim that he would kill her and her family members in case she would disclose about the occurrence to anyone. At the time of admission of the victim in the hospital she was found pregnant for 23 weeks and 03 days, as per ultrasound report (Annexure R-3).

7. The victim was less than 14 years of age at the time of the occurrence. As per the birth certificate, issued by the Department of Health, Government of Haryana (Annexure R-1), the date of birth of the prosecutrix is 09.02.2008. The FIR was registered on 26.05.2022. Considering the period of pregnancy, the age of the prosecutrix comes to be less than 14 years at the time of alleged occurrence.

8. As per the status report, dated 10.04.2024, filed by way of an affidavit of Sh. Paramjeet Samota, HPS, Deputy Superintendent of Police, Assandh, Karnal, on 31.05.2022, the pregnancy of the victim was



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terminated. The foetus, blood sample of the victim and the blood sample of the accused were sent for FSL examination.

9. As per the statement of the victim Hxxx (PW-1) (Annexure P-2) and as per the testimony of her mother (PW-4), they have supported the prosecution version.

10. I have also considered the submissions made on behalf of the learned counsel for the petitioner that DNA profile of the accused did not match with the foetus, hence, the petitioner is not biologically related to the foetus.

11. The evaluation of the oral testimony of the victim and the result of DNA examination is a matter of trial. However, at this stage, no conclusion can be drawn on the basis of Forensic Science Laboratory, report, dated 25.01.2024 (Annexure R-1) that the petitioner is not biologically connected with the foetus. As per the said report, the following samples were sent for examination:-

- “1. Item No. 1-Blood sample of the accused Mohit;
2. Item No. 3-Blood sample of the prosecutrix; and
3. Item No. 4-foetus:”

12. As per the conclusions of the said report, Item Nos. 3 & 5 are stated to be blood samples of the victim but they do not match the DNA profile of the foetus (item No. 4). The conclusion reads as under:-

*“The DNA examination (STR analysis) performed on the above mentioned exhibits indicates that:-*

- 1. The DNA profile obtained from the source*



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*of item No. 1 (Blood sample of accused), does not show any allelic contribution to that of item No. 4 (foetus). Hence, the accused is not biologically related to the foetus.*

*2. Item Nos. 3 and 5 stated to be blood sample of victim yielded Male DNA profile with proper amplification of Y-STR loci. Hence, it shows that these are not the blood samples of the victim (female) and does not match with the DNA profile of the Foetus (Item No. 4).*

*3. Therefore, the profile of the Foetus is being preserved so that if in future fresh blood samples of accused & victim are sent, comparison with that of the Foetus may be performed and reported thereof.”*

13. In view of the conclusion that the foetus even does not belong to the victim, it appears that the report is not authentic.

14. In the case under Sections 363, 376, 376 (2) (f) and 302 of the IPC, where there was a failure to conduct the DNA test of the sample taken from the accused, Hon’ble the Apex Court in Sunil vs. Madhya Pradesh 2017 (4) SC 393, has observed that a positive result of the DNA test would constitute clinching evidence against the accused, if however, the result of the test is in the negative, i.e. favouring the accused or if DNA profiling had not been done, the weight of the other material evidence on record still has to be considered. The relevant part reads as under:-

*“From the provisions of Section 53A of the Code and the decision of this Court in Krishan Kumar(supra) it does not follow that failure to conduct the DNA test of the samples taken from the accused or prove the report of DNA profiling as in the present case would necessarily result in the*



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*failure of the prosecution case. As held in Krishan Kumar (para 44) Section 53A really "facilitates the prosecution to prove its case". A positive result of the DNA test would constitute clinching evidence against the accused if, however, the result of the test is in the negative i.e. favouring the accused or if DNA profiling had not been done in a given case, the weight of the other materials and evidence on record will still have to be considered. It is to the other materials brought on record by the prosecution that we may now turn to."*

15. The decision relied upon by the counsel for the petitioner in Sunil's case (*supra*) is distinguished on facts. In the said case the High Court of Judicature at Bombay Bench at Aurangabad has set aside the conviction on the basis of DNA report. In the said case, the prosecutrix and another witness were not found credible as they have changed their statements in the cross examination. The ocular evidence was not found supported. As such DNA not matching was also held as corroborative factor to raise doubt.

16. Keeping in view the age of the prosecutrix-victim; the fact that the prosecutrix was found 23 weeks pregnant at the time of registration of the FIR; and that the prosecutrix has supported the prosecution version in her statement recorded in the trial Court, I am of the considered opinion that the allegations are serious in nature. The petitioner could not make out a case for bail, as such, the present petition stands dismissed.

17. However, it is observed that as per the Forensic Science Laboratory Report (Annexure R-1), the foetus has been preserved. The trial Court shall consider for passing appropriate orders for fresh DNA



examination.

18. Pending miscellaneous applications, if any, also stand disposed of.

(HARPREET KAUR JEEWAN)  
JUDGE

November 18, 2024  
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| Whether Speaking   | Yes/No |
| Whether Reportable | Yes/No |