

CRM-M-15018-2024 -1-

299 IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-15018-2024
Date of decision: 22nd April, 2024

Rakesh Kumar ...Petitioner(s)
Versus
State of Punjab ...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. B.S. Aulakh, Advocate for the petitioner.
Mr. A.S. Samra, AAG, Punjab.

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.	Police Station	Sections
174	Lambi, District Sri Muktsar Sahib	376, 212 and 120-B of Indian Penal Code, 1860 (for short 'IPC') and Sections 5 and 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 the aforementioned FIR was registered on the basis of statement recorded by the prosecutrix 'J' (name withheld) alleging therein that she was sixteen years old and since her father died long back, therefore, she alongwith her brother had been living with her grandparents in their village, whereas, her mother (co-accused Sumandeep @ Mannu) is living

with the co-accused Pardeep Kumar at Dabwali. She alleged that about a month back when she had gone to her mother's place to pick up her brother, the co-accused Pardeep Kumar while extending threats to kill her, had committed rape upon her when she was alone. He kept on reavivshing her even thereafter, whenever he found opportunity. The victim mustered courage to disclose about the entire incident to her grand-mother about a week back. She was brought for her medical examination by her grandmother to hospital. On the basis of this statement, initially a case under Section 376 of IPC and Section 6 of POCSO Act was registered. Investigation proceedings were initiated. The statement of the prosecutrix was recorded under Section 164 of Cr.P.C. before the concerned Magistrate. She recorded a supplementary statement on 18.08.2023, alleging that acts of aggravated penetrative assault were committed upon her by the co-accused Pardeep Kumar and this fact was very much within the knowledge of the present petitioner who is brother of the co-accused Pradeep Kumar as well as her own mother i.e. co-accused Sumandeep but in order to save the accused Pradeep Kumar, her mother and the present petitioner kept on pressurizing to not to disclose about those acts to anybody. On the basis of this supplementary statement, offences under Sections 120-B and 212 of IPC were also added. The present petitioner and the co-accused were arrested on 18.08.2023. After completion of necessary investigation and usual formalities, challan was presented in the Court and presently, the petitioner as well as co-accused are facing trial before the learned trial Court.

3. The present petition has been filed by the petitioner on the grounds and it has been argued by his counsel that she has been falsely implicated in this case. She was neither named in the FIR nor in the statement of the prosecutrix as recorded under Section 164 of Cr.P.C. and was nominated as an accused in a supplementary statement of the prosecutrix which was recorded eight days after lodging of the FIR by making due deliberations and concoctions with her grand parents. He is in custody since 18.08.2023. The investigation has completed. Trial is likely to take time. No useful purpose would be served by keeping him in custody anymore. The co-accused Sumandeep whose case was on similar footing has since been extended benefit of bail, on the ground of parity, the petitioner too deserves to be released on bail. With these broad submissions, it is urged that the petition deserves to be allowed.

4. Status report has been filed by learned State counsel-respondent wherein it is submitted that the petitioner was found to be involved in commission of the subject offences after conducting thorough investigation in the matter and on the basis of supplementary statement of the prosecutrix. The allegations against the petitioner are serious in nature. FSL report is still awaited. The prosecutrix is yet to be examined. There are chances of her intimidating the witnesses, if extended benefit of bail. It is argued that the petitioner in-conivance with his brother i.e. co-accused Pradeep abetted the commission of subject offences and harboured him. Hence, it is urged that he does not deserve to be given concession of bail.

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. The petitioner is alleged to have entered into a criminal conspiracy with the co-accused Pardeep Kumar and as per the allegations, it was in pursuance of the said criminal conspiracy that the co-accused had ravished the minor victim. The allegations against him are of abetment of commission of offence of rape by the co-accused. He is in custody since 18.08.2023. The prosecutrix had neither disclosed anything about the involvement of the present petitioner at the time of lodging of FIR nor in the statement as recorded under Section 164 of Cr.P.C. and it is only after eight days of lodging of FIR that the name of the petitioner was taken by her and he was alleged to be involved in abetting the commission of subject offences by the co-accused. The co-accused Sumandeep whose case was on similar footing has been extended benefit of bail by this Court vide order dated 05.03.2024 in '**CRM-M-760-2024**' titled as '**Sumandeep @ Mannu Vs. State of Punjab**'. On the ground of parity and further keeping in view the period of incarceration of the petitioner, the nature of the offences for which he had been booked, the quantum of sentence which the conviction may entail and the entire facts and circumstances of the case, I am of the considered opinion that he deserves to be given concession of bail at this stage. Therefore, 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.

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

22nd April, 2024
Parveen Sharma

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| 1. Whether speaking/ reasoned | : | Yes |
| 2. Whether reportable | : | Yes |