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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-16310-2024 (O&M)

Date of Decision: 23.04.2024

Akash

.. Petitioner

Vs.

State of Haryana

..Respondent

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Pradeep Virk, Advocate and
Mr. Kamal Deep Sehra, Advocate for the petitioner.

Ms. Ankita Ahuja, AAG, Haryana.

...

SUMEET GOEL, J. (Oral)

1. Present petition has been filed under Section 439 Cr.P.C. for grant of regular bail to the petitioner in case bearing FIR No.555 dated 29.09.2021, registered for the offences punishable under Section 6 of POCSO Act and Sections 365, 376(3) and 506 IPC at Police Station Rai, District Sonipat.
2. The case set up in the FIR in question (as set out by the petitioner in the present petition) is as follows:-

“To the SHO Rai Sonipat, it is requested that myself X-Minor aged 14 year daughter of Saranvir resident of village Jagdishpur (Jhundpur), district Sonipat live in our under construction house with my family. On 28.09.2021 when at about 2:30AM I got up for using the bathroom, two boys who were already present outside the house caught hold of me after gagging my mouth took me away. When I saw them they were Akash son of Bablu alias Sanjay and Raja son of Harpal and they took me to the house of Akash son of Bablu alias Sanjay. There Akash forcibly committed rape on me and on my protesting he threatened to kill me and also on telling about it to anyone and my family. Bablu alias Sanjay father of Akash also helped him and dropped me on the street about 5:00 AM. The complaint has been given in the police station on 29.09.2021. Proceedings be initiated.”

3. Learned counsel for the petitioner has argued that the petitioner is in custody since 29.09.2021. Learned counsel for the petitioner has further argued that the victim has not named the present petitioner as an accused in her statement under Section 164 of Cr.P.C. recorded on 29.09.2021 before the JMIC, Sonapat. Learned counsel for the petitioner has further argued that the petitioner has been falsely implicated into the FIR in question on account of there being a rivalry between the families of the petitioner and the victim. Learned counsel has further argued that no medical evidence has been brought forward along with the challan (report under Section 173 of Cr.P.C.) to substantiate the cause of the prosecution. Learned counsel for the petitioner has further argued that pursuant to the examination-in-chief recorded of the victim (PW-1), an application under Section 319 of Cr.P.C. has been preferred on behalf of the victim which was declined by the trial Court. Against the said order, a revision petition has been preferred before this Court vide CRR-452-2022 wherein an interim order of stay has been granted on 10.03.2022 & the said petition is now listed for hearing on 08.08.2024. In this view of the matter, learned counsel for the petitioner has pleaded that the culmination of the trial will take long time. Thus, regular bail is prayed for.

4. Learned State counsel has opposed the present petition arguing that the allegations raised are serious in nature and thus the petitioner does not deserve the concession of the regular bail.

5. I have heard counsel for the parties and have gone through the available records of the case.

6. The petitioner was arrested on 29.09.2021 whereinafter investigation was carried out & challan was presented on 22.11.2021. Total

18 prosecution witnesses have been cited. Keeping in view the number of the prosecution witnesses cited as also the factum of a criminal revision petition (qua dismissal of an application under Section 319 Cr.P.C.) being pending before this Court; the culmination of the trial will take its own time. The rival contention of the learned counsel for the parties; regarding the weightage required to be attached to the statement made by the victim under Section 164 of Cr.P.C. as also as to whether there was enmity between the families of the petitioner and the victim; shall be gone into during the course of trial. This Court does not deem it appropriate to delve deep into these rival contentions, at this stage, lest it may prejudice the trial. The petitioner is presently aged about 24 years of age and has no criminal antecedents. As per the custody certificate dated 22.04.2024 filed by the learned State counsel, the petitioner has suffered incarceration for more than 02 years and 06 months. Suffice to say, further detention of the petitioner as an undertrial is not warranted in the facts and circumstances of the case.

7. In view of totality of factual matrix of the present case, the instant petition is allowed. Petitioner is ordered to be released on regular bail on his furnishing bail/surety bonds to the satisfaction of the Ld. concerned CJM/Duty Magistrate. However, in addition to conditions that may be imposed by the concerned CJM/Duty Magistrate, the petitioner shall remain bound by the following conditions:-

- (i) The petitioner shall not mis-use the liberty granted.
- (ii) The petitioner shall not tamper with any evidence, oral or documentary, during the trial.
- (iii) The petitioner shall not absent himself on any date before the trial.

- (iv) The petitioner shall not commit any offence while on bail.
- (v) The petitioner shall deposit his passport, if any, with the trial Court.
- (vi) The petitioner shall give his cellphone number to the Investigating Officer/SHO of concerned Police Station and shall not change his cell-phone number without prior permission of the trial Court/Illaqa Magistrate.
- (vii) The petitioner shall not in any manner try to delay the trial.

8. In case of breach of any of the aforesaid conditions and those which may be imposed by concerned CJM/Duty Magistrate as directed hereinabove or upon showing any other sufficient cause, the State/complainant shall be at liberty to move cancellation of bail of the petitioner.
9. Ordered accordingly.
10. Nothing said hereinabove shall be construed as an expression of opinion on the merits of the case.
11. Since the main case has been decided, pending miscellaneous application, if any, shall also stands disposed off.

23.04.2024

(SUMEET GOEL)

JUDGE

Jasmine Kaur

Whether speaking/reasoned	Yes	No
Whether reportable	Yes	No