

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

225

CRM-M-18319-2024 (O&M)
Date of Decision: 22.04.2024

Anil

..... Petitioner

Versus

State of Haryana

..... Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Manoj Tanwar, Advocate
for the petitioner.

Mr. Neeraj Poswal, AAG, Haryana.

MANISHA BATRA, J.

1. The present petition has been filed under Section 439 of Cr.P.C. for grant of regular bail in FIR No. 46 dated 04.02.2022 registered under Sections 323, 363, 366, 354-A of the IPC and Section 10 of the POCSO Act at Police Station Matlauda, District Panipat.
2. Brief facts of the case relevant for the purpose of disposal of the present petition are that the aforementioned FIR was initially registered under Sections 363 and 366 of IPC on the basis of a written complaint filed by the complainant - Poonam on 04.02.2022 alleging therein that the prosecutrix "P" (name withheld), who was her 15 years old daughter and was a differently abled child as she could not speak and hear, had gone missing from their house. She along with her husband had started making

search for her and found her while going with the present petitioner. They rescued her from his clutches. Investigation proceedings were initiated. Statement of the prosecutrix under Section 164 of Cr.P.C. was got recorded. The present petitioner was arrested on 05.02.2024. Offences under Sections 323 and 354-A of IPC and Section 10 of POCSO Act, were added. After completion of investigation, challan was presented in the Court and presently the petitioner is facing trial for commission of the aforementioned offences. He had moved an application for grant of bail before the trial Court, which was dismissed vide order dated 23.02.2023.

3. The present petition has been filed on the grounds and the learned counsel for the petitioner has argued that he has been falsely implicated in this case. He is in custody for a period of over two years and two months. Father of the victim has been given up as an unnecessary witness. In fact, previously there was an extra material relationship between the petitioner and the mother of the prosecutrix and as he was no more interested to pursue the said relationship any more, therefore, he had been falsely implicated by the mother of the victim in this case. The victim, her mother as well as the Interpreter with whose assistance the testimony of the prosecutrix had been recorded before the Court, have since been examined. There are no chances of petitioner's intimidating the witnesses or absconding. The trial is likely to take time. No purpose would be served by detaining him custody any more. With these broad submissions, it is urged that the petitioner deserves to be released on bail.

4. Per contra, learned State counsel has argued that the allegations

against the petitioner are quite serious in nature as by taking advantage of the physical disability of the victim, who was a minor child of 15 years of age, he took her out of lawful guardianship of her parents, sexually harassed her, physically assaulted her and also committed offence of aggravated sexual assault upon her. The victim has fully supported the version of the prosecution while appearing as PW-2 in the witness box with the assistance of PW-3, Special Interpreter, who has corroborated the factum of victim's supporting the prosecution case. There are chances of the petitioner absconding if granted benefit of bail. Hence, it is argued that the petition does not deserve to be allowed.

5. I have heard learned counsel for the petitioner as well as learned State counsel and have perused the record carefully.

6. As per the allegations, on 04.02.2022, the petitioner had taken away the minor victim, who is a differently abled child, out of the lawful guardianship of the complainant and had sexually harassed/ assaulted her and had also voluntarily caused hurt to her. Admittedly, no medical examination of the victim was conducted. Her father was given up as an unnecessary witness by the prosecution. The mother of the victim as well as the victim have since been examined. Her mother, who has appeared as PW-1 before the trial Court, is shown to have stated that he had seen the petitioner when he was trying to pull her towards the canal. The victim, who has appeared as PW-2, is shown to have stated with the help of Special Interpreter (PW-3) that the present petitioner had taken her outside the village on a bike, while offering some cold drinks to her, and had molested

her by touching her sensitive body parts. PW-3 Special Interpreter has corroborated the fact that the victim had deposed so. The material witnesses have since been examined. The petitioner is in custody for a period of over two years and two months. It is a debatable question that the victim had been enticed away by the petitioner and the provisions of Sections 363 and 366 of the IPC are attracted in the case or not? There are no chances of petitioner intimidating the material witnesses, since they already stand examined. Trial is likely to take time. Keeping in view the nature of the subject offences, the period of incarceration of the petitioner and the attendant facts and circumstances of the case, I am inclined to hold that the petitioner deserves to be released on bail. Hence, the petition is allowed and the petitioner is ordered to be admitted to bail subject to his furnishing personal as well as surety bonds to the satisfaction of learned trial Court.

7. It is clarified that observations made hereinabove shall not be construed as an expression of opinion on the merits of the case.

(MANISHA BATRA)
JUDGE

22.04.2024
Satyawar

1. Whether speaking/reasoned: Yes/No
2. Whether reportable: Yes/No