

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CRM-M-18126-2024(O&M)

Date of order: 19.04.2024

Akash

.....Petitioner(s)

Vs.

State of Haryana

.....Respondent(s)

CORAM: HON’BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Abhimanu Jangra, Advocate
for the petitioner.

Mr. Surinder Kumar Dagar, DAG Haryana.

Nidhi Gupta, J.

Prayer in the present first petition filed under Section 439 Cr.P.C. is for grant of regular bail to the petitioner in case FIR No.119 dated 29.09.2022 registered under Sections 323 and 506 IPC and Section 6 POCSO Act, 2012 at Police Station Women Central, District Faridabad.

2. FIR in the present case was registered on the basis of statement of father of the victim and the same reads as follows:-

“To Police Station Women Central Faridabad. It is requested that I, Sahbuddin S/o Alisher resident of Pahladpur Badauli Faridabad. On 28.09.22, I had gone to Palwal fields. When I came home today on 29.9.2022, my daughter Alifa aged 9 years old, who had gone out to play in the street, told me that Akash, who lives in our neighborhood, took her to the canal. There Akash inserted his finger in the private part of his daughter. When my daughter cried, Akash slapped her. After that, Akash dropped my daughter home. Legal action should be

taken against Aakash. SD-Sahbuddin Pahladpur Badauli (Faridabad) 8929862895 XXXX”

3. Learned counsel for the petitioner inter alia submits that the petitioner has been wrongly implicated in the present FIR. It is contended that prosecution case cannot be relied upon as there are material contradictions in the statement of the victim inasmuch as in her statement before the Child Welfare Committee she has stated that the petitioner had taken her to a sewer pipe; in her statement under Section 164 Cr.P.C., she had stated that the petitioner had taken her near BPTP Flyover in sewer pipes; in her examination-in-chief, she has stated that the petitioner had taken her near a pool; and in her cross-examination, she said that the petitioner had taken her near a pool where there were bushes, well and pipes. It is submitted that therefore, it is clear that the victim is not stating the correct facts.

4. Ld. Counsel further argues that the falsity of the statements of the victim and the prosecution side are also borne out from the fact that the medical evidence does not corroborate the statement of the minor victim. Learned counsel refers to MLR (Annexure P2) to submit that as per the same, it has been recorded that *“No active bleeding seen”* from private part of the victim (at page 15 of the paper book). It is submitted that the said medical evidence therefore, clearly shows that the victim has misstated in her cross-examination (Annexure P6) that she was bleeding from her private part. It is stated that in the MLR, it has also been recorded that *“no external fresh injury seen”* and there has been no vaginal discharge or bleeding. Therefore, the above statement of the victim is in

contradiction of the medical evidence on record. It is further contended that the present FIR has been registered on the basis of hearsay evidence; and that the petitioner has been falsely implicated for the reason that parents of the victim who are neighbours of the petitioner, harbor jealousy against the petitioner because of difference in religion.

5. Per contra, learned State Counsel vehemently opposes the prayer for grant of regular bail to the petitioner and submits that at the time of occurrence, the victim was only 9 years of age. It is submitted that date of incident is 29.09.2022, the victim was admitted in the hospital on 29.09.2022 itself, and she remained admitted there till 01.10.2022 i.e. for three days, because of sexual assault committed upon her by the petitioner. It is submitted that the victim in her statement under Section 164 CR.P.C. and even in her deposition as PW1 has supported the prosecution case. Complainant/Father of the victim in his deposition as PW2 has also supported the prosecution case.

6. Learned State Counsel further submits that the victim has also alleged against the petitioner that when the petitioner had forcibly taken the victim away, she had screamed whereupon the petitioner had slapped her and put a knife on her neck and had also threatened her not to tell anyone otherwise he would kill her and throw her in the canal. It is contended that therefore, there is an actual apprehension for safety of the minor victim in case the petitioner is granted bail.

7. Learned State Counsel files custody certificate of the petitioner dated 18.04.2024, which is taken on record. As per the custody

certificate, the petitioner has been in custody as under trial for 1 year 6 months and 18 days.

8. No other argument is made on behalf of the parties.
9. I have heard learned counsel for the parties and perused the case file in detail.
10. Without commenting on the merits of the matter, however, keeping in view the totality of the facts and circumstances of the case, present petition is **dismissed**.
11. However, it is made clear that nothing stated above shall be construed as an opinion on the merits of the matter.
12. Pending application(s) if any also stand(s) disposed of.

19.04.2024
Sunena

(Nidhi Gupta)
Judge

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No