

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

205

CRM-M-18889-2024(O&M)

Date of order: 24.04.2024

Dharambir

.....Petitioner(s)

Vs.

State of Haryana

.....Respondent(s)

CORAM: HON’BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Shekhar Verma, Advocate
for the petitioner.

Nidhi Gupta, J.

Present is the **second** petition under Section 439 Cr.P.C.

read with Article 21 of the Constitution of India seeking grant of **regular bail** in case FIR No.330 dated 13.08.2023 (Annexure P1) registered under Section 365 IPC (Sections 363, 366 and 376 IPC and Section 6 POCSO Act, 2012 added later on) at Police Station Matlauda, District Panipat.

2. FIR in the present case was registered on the basis of statement of father of the victim which reads as under:-

“To SHO Shab, Police Station Matlauda, Respected Sir, it is requested that I Mahipal son of Sh. Kashmiri Lal, Caste Doom, resident of Gyanan, Pana Matlauda. It is requested that I am Mahipal S/O Shri Kashmiri Lal, resident of Gayanam Pana Matloda. I have three girls and two boys, a total of five children. My daughter Kajal, aged 17½ years, went away from home last night at around 1.30 am without informing us, for which we have personally searched for her till morning, but she has not been found yet. My daughter Kajal should be searched

for, whose complexion is as follows: dark complexion, long face, strong, slim body, height about five feet, marks of stitches on the forehead, red suit, mehendi colored chunni draped on the head, wearing dark colored pajama underneath, on the legs. Wearing rubber slippers. I request you to search for my daughter Kajal as soon as possible. Thanks...”.

3. Learned counsel for the petitioner submits that the victim, the complainant/father of victim, and mother of the victim have all been examined in the present matter before the learned trial Court as PW1, PW2, and PW3 respectively. All the 3 star witnesses have turned hostile, as evident from their statements Annexure P6, P7 and P8 respectively. It is prayed that accordingly, the petitioner be released on regular bail.

4. Per contra, learned State Counsel files custody certificate dated 23.04.2024, which is taken on record. As per the custody certificate, the petitioner has undergone 7 months and 29 days as under trial. Learned State Counsel vehemently opposes the prayer made on behalf of the petitioner and submits that at the time of commission of offence, the victim was only 17 years of age whereas the petitioner was about 31 years. It is submitted that the victim in her statement under Section 164 Cr.P.C. had supported the prosecution case. However, subsequently, she had turned hostile. It is submitted that FSL report in the present case has come positive. However, DNA report is still pending.

5. No other argument is made on behalf of the parties.

6. I have heard learned counsel for the parties and perused the case file in detail.

7. A perusal of the record of the case shows that the petitioner has not been named in the FIR. However, he was named by the victim in her statement recorded under section 164 CRPC on 14.8.2023; in which she had stated that on the intervening night of 12-13.8.2023 at about 2 AM, when all her family members were sleeping, she had gone to the street to urinate when the petitioner came there. In her statement, the victim had also stated that earlier she used to talk with the petitioner, and he used to ask her to marry him, and when she refused to marry the petitioner, he put his hand on her mouth and forcibly took her to the bushes behind the bus stand at Panipat and committed rape upon her at the bus stand. Thereafter at about 8 PM, they boarded the bus from the bus stand and came back home. Subsequently, the victim returned home on 14.8.2023 when she was produced before the Magistrate and recorded the above statement wherein she had specifically named the petitioner. It is on this basis that the petitioner was then arrested on 24.08.2023.

8. The victim in her testimony as PW1/Annexure P6, has resiled from her above said statement and has turned hostile. Even her parents have turned hostile, wherein all three witnesses have stated that they do not know the petitioner, and that he never abducted the victim or committed any type of sexual assault upon the victim.

9. Without commenting on the merits of the matter, however, keeping in view the totality of the facts and circumstances of the present case including the fact that the victim was 17-and-a-half years old at the time of commission of alleged offence, whereas the petitioner was 31 years of age; that DNA report has not yet been received in the present

case; that FSL report is positive and human semen has been detected on the exhibits submitted by the victim; present petition is **dismissed**.

10. However, it is made clear, that nothing stated above shall be construed as an expression of opinion on the merits of the matter.

11. Pending application(s) if any also stand(s) disposed of.

24.04.2024

Sunena

(Nidhi Gupta)

Judge

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No