

**CRM-M-18958 OF 2024**

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**CRM-M-18958 OF 2024**

Vicky Kumar Paswan @ Vikkee Kumar Paswan

*.....Petitioner**Versus*

State of Haryana

*.....Respondent****Date of decision: 19.07.2024*****CORAM: HON'BLE MRS. JUSTICE SUDEEPTI SHARMA**

Present: Mr. Sukesh Kumar Jindal, Advocate for the petitioner.
Mr. P.P. Chahar, Sr. DAG, Haryana.

SUDEEPTI SHARMA, J

Prayer in this 2nd petition filed under Section 439 Cr.P.C is for grant of regular bail to the petitioner in case FIR No.53 dated 23.02.2023 under Sections 376(2)(n), 376(3) and 506 IPC and Section 6 of the POCSO Act registered at P.S Model Town, Panipat.

The FIR was registered on the complaint of complainant mentioning therein that she was having two daughters and two sons. Her daughter/victim was aged about 14 years. Her daughter's friend was residing at Kacha Camp and her cousin (Mausi's son) namely Vicky Kumar Paswan son of Bhikhari Paswan, is resident of Raj Nagar, District Madhubani (Bihar) and was residing in the house of Bittu Chakki Wala, Kacha Camp, Panipat as tenant. He used to talk with her daughter/victim telephonically. On 22.02.2023, at about 9.00 am, Vicky called her daughter on canal bye pass near Deshwal Chowk and he took her daughter to



thereafter he left her outside the Hotel and threatened to kill her if she disclosed the matter to anyone. Vicky fled away from the spot. Her daughter reached the house in the evening and she disclosed to her about this. Statement of the victim under Section 164 Cr.P.C was got recorded. The victim was got medicolegally examined. Petitioner was arrested on 24.02.2023.

Learned counsel for the petitioner contends that the victim and the complainant have already turned hostile in this case. He submits that the Doctor concerned has specifically deposed that accused had changed his underwear at that time but he did not notice any stain over it and that the possibility of blots of semen on the underwear cannot be ruled out. He relies on the statement of PW5 wherein she stated that she never handed over her Aadhar card to the accused and that on 23.02.2023, the victim wore her black colour underwear. She further stated that she visited Lakshy Hotel with the accused on 22.02.2023. Learned counsel further referred to the statement of PW4-Ramesh Kumar, Head Teacher, who brought the admission and withdrawal Register of the School for the period from 01.04.2017 uptill date. As per the record, her date of birth is 01.01.2009, which was entered into record on the basis of Aadhar Card. He further relied on statement of the victim recorded under Section 164 Cr.P.C wherein she stated that the petitioner had not done any wrong act with her. He contends that there is no averment in the status report about the petitioner having ever absconded or influencing the material prosecution witnesses. He, therefore, prays for grant of regular bail to the petitioner.

Per contra, learned State counsel submits that the history of the incident is recorded at the time of issuing MLR. The petitioner is specifically named in the FIR and that the allegations levelled by the victim against him of sexual assault are specifically recorded. As per custody certificate, the petitioner



has already undergone one year, four months and 24 days of custody including remission.

I have heard the learned counsel for the parties and perused the record.

A status report was filed by way of affidavit of Satish Kumar, DSP, City Panipat on behalf of respondent-State of Haryana, a perusal of which reveals that on 28.02.2023, the investigation of the case was conducted at Lakshay Hotel, Panipat. CCTV footage of the cameras installed at Lakshay Hotel was inspected and taken on a 32-GB sandisk pen drive with red and black colors. Moreover, a certificate under Section 65-B of Indian Evidence Act, 1872 was also obtained. The hotel entry register and ID submitted along with the hotel entry were also inspected. It was found that room no.101 was booked in the name of the petitioner on February 22, 2023. Moreover, identity proof given by the petitioner at the time of entry into the register revealed that the petitioner had used the ID of one Tulsi instead of the prosecutrix. The careful examination of the CCTV footage revealed that the petitioner had come into the hotel with a girl wearing a mask on her face. Copy of the ID as well as hotel register are annexed herewith as Annexure R.3. It is further stated in the report that on 06.03.2023, CWC counselling of the victim girl was conducted. Thereafter, on 15.03.2023, case property was taken from the Malkhana and was submitted to the FSL Madhuban, Karnal. The FSL report was received in this case and it was revealed that the sperms have been detected on the samples sent for examination. Moreover, DNA report was also received in this case as per which DNA profile obtained from item no.2 (underwear stated to be of victim), source of item no.3 (underwear of accused) was matching with the DNA profile obtained from source of item no.4 (blood sample stated to be of accused). Copy of FSL report and DNA report are

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The trial court had yet to appreciate the evidence of the hostile witnesses and mere fact that these witnesses had turned hostile, is no ground or reason to discard the entire evidence including the MLR, DNA report and the FSL report which substantiates the occurrence of the incident.

From the perusal of FIR, it is apparent that the petitioner has been attributed specific active role. After having gone through the contents of the status report and considering the gravity of the offence, this Court is not inclined to grant the relief of regular bail.

Dismissed.

However, observations made hereinabove shall have no bearing on merits of the case.

(Sudeepti Sharma)

Judge

July 19, 2024
manoj

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No