

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

203

CRM-M-19131-2024

Date of Decision: 25.04.2024

Suraj

.... Petitioner

Versus

State of Haryana

.... Respondent

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present: - Mr. Shivansh Malik, Advocate for the petitioner.

Mr. Surinder Kumar Dagar, DAG, Haryana.

NIDHI GUPTA, J. (ORAL)

The petitioner has filed the present 1st petition under Section 439 of the Code of Criminal Procedure, 1973, for grant of regular bail in case FIR No. 332 dated 04.08.2023 (Annexure P-1) registered under Sections 363 and 366 IPC [Section 6 of the Protection of Children from Sexual Offences Act, 2012 and Sections 376(2)(n) and 506 IPC were added later on] at Police Station Purani Sabji Mandi, Rohtak, District Rohtak.

The aforesaid FIR was registered on the basis of complaint moved by the father of the victim, which reads as under:-

“...Respected Sir, it is stated that I Sanjay s/o Bhagwandas r/o Fatehpur colony near Bhag Ka Akhara. My daughter xxxx aged about 17 years went to school to study but did not return. My daughter wore a school dress which included a blue check shirt and pant. Her colour is brown wheatish, round face, height around 5’1 and age 17 years. I found out

by myself that my neighbour Suraj s/o Jora has taken my daughter by enticing her as he was following my daughter for many days whom I and my wife also made him understand. Find my daughter as soon as possible and take action against Suraj and kindly do not put my daughter's photograph in any advertisement..."

Learned counsel for the petitioner, *inter alia*, submits that at the time of incident, the victim was 17 years and 07 months old. It is submitted that the victim had accompanied the petitioner of her own free will and thereafter, the victim and the petitioner were recovered by the police from Railway Station, Panipat. The victim in her statement under Section 164 Cr.P.C. (Annexure P-2) recorded on 09.08.2023 (at page 10 of the paper-book) has stated as under:

"It is stated that I was in relation with Suraj s/o Jora Singh from 5-6 month. He lives near my house. He does not have his mother. Sister is married, father is mentally disturbed, so when I got the chance I went to his house and we made physical relation. We made physical relation on many occasions in last 5-6 months. I have tested a few days ago and I was found pregnant. I was afraid that I will be beaten by my parents that is why on 04.08.2023 I went away with Suraj to Katra on train. I went away with my one will. At first Suraj has made the relation forcefully, raped me, then he threatened me that he will disclose it, eliminate me that is why whenever he asked me to come I went there. I am pregnant but did not wish to carry it forward. Do not want to say anything."

It is further submitted that even in her testimony (Annexure P-7) as PW-4, the victim has not stated that she was raped by the petitioner and has only stated that her pregnancy was terminated

subsequently. Learned counsel also informs that in her cross-examination, the victim has stated that she used to say '*I Love You*' to the petitioner and has not promised to marry him. Even the DNA report is not positive and the same is available on record as Annexure P-14. It is stated that the petitioner has been in custody since 09.08.2023. No useful purpose will be served by further detention of the petitioner in custody. Thus, it is prayed that the present petition may be allowed and the petitioner be released on regular bail.

Per Contra, learned counsel for the State vehemently opposes the prayer for grant of bail to the petitioner and submits that even though the victim had admitted her relationship with the petitioner in her statement recorded under Section 164 Cr.P.C. (Annexure P-2), but at the time of alleged incident she was minor and under the provisions of POCSO Act, any alleged consent of victim is immaterial. It is submitted that when the victim was recovered, she was found 02 months pregnant and subsequently, the pregnancy was terminated. Learned counsel for the State submits that it cannot be said that the DNA has not been matched as perusal of DNA report (Annexure P-14) shows that although, the specimen was taken of the fetus, however, upon examination it was found that the specimen was of the body part of the victim, therefore, it cannot be said with certainty that the DNA has not been matched. On instructions, learned counsel for the State informs that complainant in the present case has also been examined as PW-5 and his testimony is appended with the present petition as Annexure P-8. He further informs that out of total 20 prosecution witnesses, 18 have already been examined by the learned trial Court.

Learned counsel for the State has filed custody certificate dated 24.04.2024, which is taken on record, as per which the petitioner has been in custody as an undertrial for a period of 08 months and 15 days. As per custody certificate, there is no other case against the petitioner.

At this stage, reference may be made to a recent judgment of High Court of Karnataka in **Criminal Petition No. 13469 of 2023 (482) G. Raghu Varma vs. The State of Karnataka and others, decided on 19.02.2024**, wherein in para 7, it has been held as follows:-

“7. The object of POCSO Act is to protect minors from sexual abuse and not to criminalize the consensual relationship between two adolescents who had consensual sexual intercourse without knowing the consequences. The petitioner and the survivor come from the lower socio economic segment having limited access to information and knowledge, thus depriving them about the consequences in having consensual sexual intercourse. Though having sexual intercourse consensually with the minor is an offence under the POCSO Act, however, having regard to the facts and circumstances of the case, to secure the ends of justice, it would be appropriate to quash the impugned proceedings, otherwise, it would result in miscarriage of justice to the survivor and the child.”

Having heard learned counsel for the parties, but without commenting on merits of the case, however, keeping in view the totality of the facts and circumstances of the case and the custody period undergone by the petitioner including the fact that the custody certificate reveals that there is no other case against the petitioner; moreover, material witnesses already stand examined by the learned trial Court; and

that conclusion of trial will take considerable time and no useful purpose would be served by further detention of the petitioner. Thus, the present petition is **allowed**.

The petitioner-Suraj S/o Jora, is ordered to be released on regular bail on his furnishing bail/surety bonds to the satisfaction of the trial Court/Chief Judicial Magistrate/Duty Magistrate, concerned.

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

25.04.2024
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(NIDHI GUPTA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No