

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CRM-M No.19604 of 2023
Date of Decision: 29.02.2024

Pawan Kumar @ Poni ... Petitioner

Versus

State of UT, Chandigarh ... Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Amit Kashyap, Advocate,
for the petitioner.

Mr. Manish Bansal, Public Prosecutor, UT, Chandigarh.

MANISHA BATRA, J.(Oral)

1. The present petition has been filed under Section 439 of Cr.P.C. seeking regular bail in FIR mentioned below:-

FIR No.	Dated	Police Station	Sections
37	15.05.2022	Sector 49, Chandigarh	366 and 376 of IPC and 4 of Protection of Children from Sexual Offences Act, 2012 (For short “POCSO Act”)

2. Brief facts relevant for the purpose of disposal of this petition are that the aforementioned FIR was registered on the basis of statement recorded by the prosecutrix “S” (name withheld) on 15.05.2022 alleging therein that she was got employed by her parents as a housemaid in a house situated at Sector 28, Chandigarh to take care of a child. She remained there for about one week but as she was not enjoying her work, therefore, on the morning of 15.05.2022, she had left that house and while she was going through the road, she met an auto driver. She asked him to leave her at Ashiyana Abhaypur, Panchkula. She also told him that

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she was not having any money. The said autodriver who was having a tattoo of snake on his right arm and was wearing a gold coloured earring, allowed her to board in his autorickshaw but instead of dropping her at her house, he took her to some forest area wherein, he committed rape upon her and while leaving her there only, he left that place. She walked from that place and had managed to reach home. On the basis of her statement and after registration of FIR, investigation proceedings were initiated. The medico legal examination of the prosecutrix was conducted. Her statement under Section 164 of Cr.P.C..was also recorded wherein while reiterating her version, she disclosed that the autodriver had disclosed his name as Pawan. The accused was arrested on 15.05.2022. He was also medically examined and his blood samples were sent for the purpose of DNA profiling. After completion of necessary investigation and usual formalities, challan under Section 173 Cr.P.C. was presented in the Court and presently, the petitioner is facing trial for commission of offences punishable under Section 366 and 376 of IPC and Section 4 of POCSO Act. He had moved an application for bail before the learned trial Court which had been dismissed vide order dated 07.09.2022.

3. The present petition has been filed by the petitioner on the grounds and it is argued by his counsel that he has been falsely implicated in this case. The prosecutrix has given different statements at different times. Her statement has been recorded on oath in the Court wherein she has introduced a new version by saying that it was some other auto driver who had forcibly made sexual relations with her and not the accused Pawan. It is argued that he is in custody for a period of more than one year and nine

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months. The trial is likely to take time. The testimony of the prosecutrix is not reliable. Therefore, it is argued that he deserves to be given concession of bail.

4. Per contra, learned Public Prosecutor, UT, Chandigarh has argued that there were serious allegations against the petitioner. The DNA profile recovered from the saliva present on the brassier and seminal stains present on the underwear, groin, vulval, vaginal swabs and smear slides of the prosecutrix has been found to be consistent with the DNA profile of the present petitioner and even DNA profile of the prosecutrix is found to be present on the shorts of the petitioner. The testimony of the prosecutrix is to be read as a whole which shows that it was the petitioner and none else who had ravished the victim who was only a 15 year old young girl at the time of the occurrence. With these submissions, it is urged that the petition does not deserve to be allowed.

5. I have heard learned counsel for the petitioner as well as learned Public Prosecutor, UT, Chandigarh at considerable length and have gone through the record carefully.

6. The allegations as levelled in the FIR are that as on 15.05.2022, the victim was walking on the road after she had left the house wherein she had been employed to take care of some other child. The petitioner who is an auto driver by profession had met her. She had requested the petitioner to leave her at her house and after making her board in his vehicle, the victim had taken her towards the jungle area wherein he had left her there only after ravishing her. At the time of lodging of the FIR itself, she had given two specific marks qua identification of the rapist by stating that he had tatoo of

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snake on his right arm and was wearing a gold coloured earring in his left ear. In her statement recorded before the trial Court, she even stated that the person who had ravished her had also disclosed his name to her as Pawan. A copy of her sworn statement has been placed on record by the petitioner as Annexure P-2 and on a perusal of the same, it is revealed that though at some point of her examination, she stated that she had boarded some other auto and forcible physical relations with her were maintained by some other auto driver and she could not identify the same but, it cannot be ignored that during her examination-in-chief, she not only identified the tattoo on the arm of the petitioner but also reiterated her version that he was wearing a gold earrings in his ear. It is also important to mention here that DNA profiling of the saliva present on the brassier of the prosecutrix and seminal stains found on her underwear, groin, vulval, vaginal swabs and smear slides were found to be consistent with the DNA profile of the present petitioner and even DNA profile of the prosecutrix is found to be present on the shorts of the petitioner which scientific evidence cannot be ignored and goes a long way to show that it was the petitioner who had committed the act of aggravated penetrative sexual assault upon the prosecutrix. The allegations against the petitioner are serious in nature. The trial is going on at a proper pace and there is nothing on record to show that there would be any undue delay in conclusion of the same. Therefore, keeping in view the discussion as made above and serious nature of the offences alleged to have been committed by the petitioner and the attendant facts and circumstances, I am of the considered view that the petition does not deserve to be allowed and the petitioner does not deserve to be given concession of bail. Hence, the

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petition stands dismissed.

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

29.02.2024
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(MANISHA BATRA)
JUDGE

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