

222 IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-18868-2024
Date of decision: 1st May, 2024

Lovepreet Singh @ Preet Brar

...Petitioner(s)

Versus

State of Punjab

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Lovdev Singh, Advocate for the petitioner.
Mr. A.S. Samra, AAG, Punjab.

MANISHA BATRA, J (ORAL):-

The instant one is the second petition under Section 439 of Cr.P.C. for grant of regular bail in case FIR No. 186 dated 27.07.2022 registered under Sections 363, 366, 376, 506 and 120-B of Indian Penal Code, 1860 (for short ‘IPC’) and Section 4 of Protection of Children from Sexual Offences Act, 2012 (for short ‘POCSO Act’) at Police Station Lambi, District Sri Muktsar Sahib. The previous bail petition as filed by him bearing No. CRM-M-21144-2023 was dismissed by this Court on 08.01.2024.

2. Brief facts of the case 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 ‘R’ (name withheld) on 27.07.2022 alleging therein that she was studying in 8th class. The petitioner was an ex student of her school. She used to message him as a friend. On 25.07.2022 at

about 8:30 AM, he had come to her while she was going towards her school and had asked her to accompany him for an outing to Bathinda. She had refused to do so. Then on 26.07.2022, when she was going towards her school with her classmate 'K' (name withheld) at about 8:30 AM, the petitioner was found present in the street along with three more boys in a car bearing No. DL 3CAU 0911. He caught hold of her by her arm and threw her classmate and herself in the car with the help of another boy who was being addressed by him as Gori. Two other youths were already sitting in the vehicle. They took them towards Panjave's canal wherein the petitioner committed rape upon her whereas accused Gori committed rape upon 'K'. Thereafter, they brought them back into the said car and left them near their houses while threatening them not to disclose about the incident to anybody. She however, disclosed about the incident to her mother who had taken her for treatment. Investigation proceedings were initiated. The prosecutrix were medico legally examined. Their statements under Section 164 of Cr.P.C. were recorded. The present petitioner was arrested on 29.07.2022. 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 the aforementioned offences along with the co-accused.

3. The present petition has been filed by the petitioner on the grounds and it has been argued by his counsel that his previous petition was dismissed when the statement of the prosecutrix had not been recorded. Now

her statement had been recorded and the circumstances have been changed as neither the prosecutrix nor her mother had supported the version of the prosecution in their respective sworn depositions as recorded before the learned trial Court. It is argued that the petitioner is in custody since 29.07.2022 i.e. for a period of about one year and ten months. Keeping in view the nature of the evidence, which has come on record in the form of the testimonies of the victim and her mother, the period of incarceration of the petitioner and the fact that the DNA report has also been received which does not connect the petitioner with the commission of offences alleged against him, he deserves to be given concession on bail.

4. *Per contra*, learned State counsel has argued that in view of the gravity of allegations as levelled against the petitioner, he does not deserve to be given concession of bail.

5. I have heard learned counsel for the petitioner as well as learned State counsel at considerable length and have gone through the record carefully.

6. As per the prosecution version, the petitioner had kidnapped the minor prosecutrix from the custody of her lawful guardian on 26.07.2022, while she was going to school and he along with the co-accused had committed aggravated penetrative sexual assault upon her. Petitioner has placed on record copies of the statements of the prosecutrix as well as her mother as recorded before the learned trial Court as Annexure P-3 and P-4 respectively and on a perusal of the same, it is revealed that neither the

prosecutrix nor her mother have implicated the present petitioner in the commission of the offences under which he had been challaned and for which, he is facing trial. Though the prosecutrix is shown to have admitted that she knew the petitioner and he was her friend but she did not support the version of the prosecution with regard to her being kidnapped and ravished by the petitioner and co-accused. She is shown to have taken a somersault to the prosecution version. It is also revealed that she was declared hostile on request of learned public prosecutor and was allowed to be cross-examined by him but no incriminating evidence against the petitioner could be extracted. The mother of the prosecutrix has not even identified the petitioner and she is also shown to have taken a U-turn by resiling from her previous version.

7. It is also noteworthy that Annexure P-2 is copy of DNA test report, as per which no human semen or male DNA was detected on samples of vaginal swabs stated to be that of the victim, which could connect the petitioner with the crime of committing offence of penetrative sexual assault upon the prosecutrix.

8. Keeping in view the nature of the evidence which has come on record in the form of testimonies of the prosecutrix and her mother, DNA report and the period of incarceration of the petitioner, I am of the considered opinion that further detention of the petitioner would not serve any useful purpose and that he deserves to be given concession of bail. Accordingly, the petition is allowed and the petitioner is ordered to be

released on bail subject to his furnishing personal/surety bonds to the satisfaction of the Chief Judicial Magistrate/ Duty Magistrate concerned.

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

8. Since the main petition has been allowed, pending application if any is rendered infructuous.

[MANISHA BATRA]
JUDGE

1st May 2024
Parveen Sharma

1. Whether speaking/ reasoned

:

Yes / No
2. Whether reportable

:

Yes / No