



Date of decision: 12.09.2024

...PETITIONER

V/S

...RESPONDENT

Present: Mr. Puneet Kakkar, Advocate
for the petitioner.

Ms. Geeta Sharma, DAG Haryana.

HARPREET SINGH BRAR J. (ORAL)

1. This is the first petition filed under Section 439 of Cr.P.C. seeking grant of regular bail to the petitioner in case bearing FIR No. 110 dated 18.08.2020 registered under Sections 365, 506 of Indian Penal Code and Section 4 of Protection of Children from Sexual Offences Act 2012 at Women Police Station, Faridabad.

2. The FIR(supra) was registered on the statement of complainant- Soni on the allegations that her father is mason by profession. She had studied upto 8th class in Govt. Girls Senior Secondary School, Sec-8, Faridabad and presently, she is staying at home. During the intervening night of 17/18-08-2020 at about 02:30 AM (midnight), in order to ease herself, she, opened the door of her house and came outside, then, a boy, namely, Mustkeen (petitioner herein) aged about 20 years, residing in their neighbourhood, was standing outside near the door of their house. She became scared on seeing him. He gagged her mouth and dragged her upto his house and took her in upstairs room of his house. She tried to raise alarm, then, he threatened to kill her. Complainant became scared. Petitioner committed rape upon her once. She asked him to leave her and he was folding her hands before and afterwards he



set her free. She came to her house. On reaching home, she narrated the entire incident which took place with her to her brother Aaqif. Her parents were away to village Sanwali. When they reached home, she along with her parents went to the Police Station and narrated the whole incident. On the basis of aforesaid allegations, FIR(supra) was registered.

3. Learned counsel for the petitioner *inter alia* contends that petitioner is not involved in any other case and his age was about 18 years at the time of incident and initially he was declared juvenile, however, the prosecution has challenged the juvenility of the petitioner, which was decided in favour of the prosecution. Petitioner is in custody for more than 04 years and learned trial Court has not even examined a single prosecution witness till date and as such on this count alone, the petitioner is entitled to grant of bail.

4. Per contra, learned State counsel opposes the prayer made by learned counsel for the petitioner on the ground that there are specific and serious allegations levelled against the petitioner and statement of prosecutrix under Section 164 of Cr.P.C. was recorded and she was got medico legally examined and at the time of incident, she was minor. However, she could not controvert the fact that petitioner is behind the bars since 05.09.2020 and even after 04 years of incarceration, not even a single prosecution witness has been examined.

5. Having heard the learned counsel for the parties and after perusing the custody certificate, it transpires that petitioner is behind the bars since 05.09.2020 i.e. for 03 years 09 months and 28 days and trial of the case is likely to take long time to conclude and not even a single prosecution witness has been examined till date. Culpability, if any, would be determined at the time of the trial. The petitioner is not involved in any other case.



6. The foundational concept of the criminal jurisprudence is to ensure speedy trial. The Hon'ble Supreme Court has repeatedly reiterated that right to speedy trial is enshrined in Article 21 of the Constitution of India. Speedy trial would cover investigation, enquiry, trial, appeal, revision and retrial etc. i.e. everything starting with the accusation against the accused and expiring with the final verdict of the last Court.

7. It has further been held in law that if a person is deprived of his liberty under a procedure which is not reasonable, fair, or just, such deprivation would be violative of his fundamental right under Article 21 of the Constitution of India. The procedure so prescribed must ensure speedy trial for determination of the guilt of such person. Some amount of denial of personal liberty cannot be avoided, but if the period of deprivation pending trial becomes excessively long, the fairness guaranteed by Article 21 of the Constitution of India would come into play.

8. In this regard, reference is being made to the law laid down by the Hon'ble Supreme Court in the context of right to speedy trial under Article 21 of the Constitution of India on the following decision:- ***Akhtari Bi Vs. State of M.P., (2001) 4 SCC 355, Surinder Singh Alias Shingara Singh Vs. State of Punjab, (2005) SCC (Crl) 1674, P. Ramachandra Rao Vs. State of Karnataka, (2002) 4 SCC 578, Babu Singh and others Vs. State of U.P., (1978) 1 SCC 579, Takht Singh and others Vs. State of M.P., (2001) 10 SCC 463; Special Leave to Appeal (Crl) No.2356 of 2010, Kushal Singh Vs. State of U.P. (2JJ.) and Fazal Vs. State of Uttar Pradesh, (2012) 5 SCC 752.***

9. In view of the above, the present petition is allowed and the petitioner-Mustakeem is ordered to be released on regular bail, subject to his furnishing bail bonds/surety bonds to the satisfaction of CJM/Duty Magistrate concerned.

10. Nothing observed hereinabove shall be construed as expression of opinion of this Court on merits of the case and the trial Court shall proceed without being prejudiced by observations of this Court.

September 12, 2024		(HARPREET SINGH BRAR)
<i>Ajay Goswami</i>		JUDGE
(i)	Whether speaking/reasoned	Yes/No
(ii)	Whether reportable	Yes/No