

CRM-M-21607-2024

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294 IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-21607-2024
Date of decision: 7th May, 2024

Gurjeet Singh
...Petitioner(s)
Versus
State of Punjab
...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

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

MANISHA BATRA, J (ORAL):-

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

FIR No.	Date	Police Station	Sections
154	25.07.2023	Sultanpur Lodhi, District Kapurthala	376/120-B of Indian Penal Code, 1860 (for short ‘IPC’) and under Sections 17 and 4 of Protection of Children from Sexual Offences Act, 2012 (for short ‘POCSO Act’) (Section 376-DA of IPC and Section 6 of POCSO Act and Sections 342, 363, 366-A of IPC added later on)

2. Brief facts of the case relevant for the purpose of disposal of this petition are that the aforementioned FIR was registered on 25.07.2023 on the basis of statement recorded by the prosecutrix ‘S’ (name withheld) who is a minor girl alleging therein that on 13.07.2023, she along with her

sister and brother had gone to Gurdwara Ber Sahib and after having langar while they were returning home she was a little behind her sister and brother, the petitioner along with co-accused Amarnath reached there on a motorcycle and by gagging her mouth and forcibly making her sit on his motorcycle, he took her in a motor room existing on the side of drainage of waste water near the river of their village. Two unknown persons were also called there. She was taken to the roof of the motor room. The petitioner then committed rape upon her whereas the other youths went from there. She further alleged that her family members while making search for her reached there at about 11:00 PM and she was taken back to her house. On seeing them, the petitioner managed to flee away. On this complaint, initially a case under Section 376, 120-B of IPC and Sections 4 and 17 of POCSO Act was registered. Investigation proceedings were initiated. The victim was medically examined. Her statement under Section 164 of Cr.P.C. was also recorded. Offences under Sections 376-DA 342, 363 and 366-A of IPC and Section 6 of POCSO Act were added during the course of investigation. After completion of necessary investigation and usual formalities, challan under Section 173 of Cr.P.C. was presented in the Court and presently, the petitioner is facing trial for the commission of the aforementioned offences. He had filed an application for grant of bail before the learned trial Court which was dismissed on 01.04.2024.

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. There is delay of twelve days in lodging of the FIR which has not been explained. Neither the petitioner nor her mother have supported the prosecution version in their sworn depositions as recorded before the trial Court. The trial is likely to take time. He is in custody since long. No useful purpose would be served by his further detention. Therefore, it is argued that the petitioner deserve to be extended benefit of bail.

4. *Per contra*, learned State counsel has argued that the allegations against the petitioner are serious in nature. There are chances of his absconding or intimidating other witnesses, if extended benefit of bail. The DNA report is also awaited. Therefore, it is argued that the petition does not deserve to be allowed.

5. I have heard learned counsel for the petitioner as well as learned State counsel at considerable length and have gone through the statements of prosecutrix and her mother, certified copies of which have been placed on record.

6. On a perusal of the sworn deposition of the prosecutrix who appeared before the learned trial Court as PW-1 on 15.03.2024, it is revealed that though she supported the prosecution version qua her being taken away and then being subjected to rape on 13.07.2023, however, she did not implicate the petitioner at all in the commission of the subject offences and rather stated that two persons namely Amarjit and Amarnath had forcibly taken her away to motor room existing near vein river for drainage of waste water and had committed rape upon her along with two unknown persons

who were already present there. She is shown to have categorically stated that the petitioner had neither kidnapped her nor he had committed rape upon her. She is even shown to have stated that the statement under Section 164 of Cr.P.C. was recorded by her at the instance of some police officials present outside the Court room. In this manner, she is shown to have given a clean chit to the present petitioner, despite the fact that she was declared a hostile witness and was cross-examined in detail by the learned public prosecutor on being given permission to him to do so. As such, it emerges from the testimony of the prosecutrix, no incriminating evidence could be extracted by the prosecution. To the similar effect is the statement of PW-2 'P' (name withheld) who is mother of the prosecutrix who too did not implicate the present petitioner at all in the commission of the offences for which the petitioner is facing trial and rather took the names of accused Amarjit and Amarnath who had committed rape upon the victim along with two unknown persons. Keeping in view the nature of evidence which has come on record in the form of testimonies of the prosecutrix and her mother, the period of incarceration of the petitioner and the attendant facts and circumstances, I am of the considered opinion that the petitioner to be released on bail. Therefore, 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

7th May, 2024
Parveen Sharma

1. Whether speaking/ reasoned

:

Yes / No
2. Whether reportable

:

Yes / No