



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH
251
CRM-M-22050-2024
Date of decision: 30th May, 2024

Happy
...Petitioner(s)
Versus
State of Haryana
...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Raj Kapoor Malik, Advocate for the petitioner.
Mr. Neeraj Poswal, AAG, Haryana.

MANISHA BATRA, J (ORAL):-

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

FIR No.	Date	Police Station	Sections
253	23.09.2023	Cheeka, District Kaithal	363 and 366 of IPC, 1860 (Sections 376 read with 511, 506 and 120-B of IPC, 1860 and Section 18 of POCSO Act, 2012 added later on)

2. Brief facts of the case relevant for the purpose of disposal of the present petition are that on 23.09.2023, a written complaint was filed by the complainant ‘K’ (name withheld) alleging that the victim ‘V’ (name withheld) who was his grand daughter had gone missing from the house on 23.09.2023 without informing anyone. She had also taken along with her, some gold and silver ornaments and cash amount of Rs. 65,000. He raised suspicion that she had been enticed away by the petitioner and his two



friends. Initially, a case under Sections 363 and 366 of IPC was registered. Investigation proceedings were initiated. Subsequently, the victim and the petitioner moved a petition bearing CRWP No. 9609-2023 before this Court and notice of the said petition was given for 28.09.2023. The matter was adjourned to 09.10.2023. On 28.09.2023, itself, the victim and the petitioner were taken to police Station Sector 3, Chandigarh, wherein their statements were recorded and they were sent along with their respective family members. As per the allegations, on 04.10.2023, the victim was brought to the police Station by her grand father. Then her statement under Section 164 of Cr.P.C. was recorded before the Sub Divisional Judicial Magistrate, Ghula wherein she levelled allegations that the petitioner had been harassing and extending threats to her and on his asking, she had left her house on 23.09.2023. She also levelled allegations that he had developed physical relations against her wishes at Chandigarh. She, however, refused to get her medical examination conducted. On the basis of her statement, offences under Section 376 read with Section 511 and 506 of IPC as well as Section 18 of POCSO Act, 2012 were added. During the course of investigation, the petitioner was arrested on 16.10.2023. After conclusion of usual formalities of investigation, challan was presented and the petitioner is facing trial for commission of the aforementioned offences.

3. The petitioner had filed an application for grant of bail before the learned trial Court which was dismissed vide order dated 18.03.2024.

4. It will be relevant to mention here that on 31.10.2023, the father of the victim got registered an FIR bearing No. 308 alleging that the victim



had gone missing. It was found that she had been murdered by her maternal aunt and uncle and both of them were arrested.

5. It is argued by learned counsel for the petitioner that infact, the victim who had attained majority on 22.09.2023 was in relationship with the petitioner and they wanted to perform marriage with each other. On attaining majority, she had left her house at her own on 23.09.2023 and it was she who had called him from Patiala and the petitioner after joining her there, had gone to Chandigarh for the purpose of engaging a counsel for performance of their marriage. A protection petition had been filed by the Advocate engaged by them seeking protection of their life and liberty from the family members of the victim. This petition was filed on the basis of a live-in agreement got prepared by their counsel and since the Court had refused to grant any protection, therefore, the said petition had been ultimately withdrawn on 09.10.2023.

6. It is further argued by learned counsel for the petitioner that the statement of the victim as recorded at Police Station Sector 3, Chandigarh clearly revealed that she had voluntarily and willingly left her house and had come to Chandigarh to perform marriage with the petitioner after attaining the age of majority and there was no force or threat applied upon her. She had even refused to get any medical examination conducted or to initiate any police action against the petitioner and entry in the general diary of the police station had also been made to this effect. It is argued that infact, it was a case where the victim was subsequently forced to record statement under Section 164 of Cr.P.C. against the petitioner by her family members and



subsequent homicidal death that was nothing but was honour killing by her own maternal uncle and aunt, was sufficient proof of the same. It is argued that no case for commission of subject offences has been made out as against the petitioner. The trial is likely to take time. No useful purpose would be served by keeping him in custody anymore and it is, therefore urged that he deserves to be released on bail.

7. Status report has been filed by the respondent-State as per the contents of which, the victim in her statement recorded under Section 164 of Cr.P.C. levelled specific allegations against the petitioner. Even the petitioner had suffered disclosure statement admitting that he had committed rape upon the victim when she was minor and then after her attaining majority on 27.09.2023. It is argued that the material witnesses are yet to be examined. There are chances of petitioner's intimidating them, if extended benefit of bail. The allegations against the petitioner are serious and specific in nature and therefore, it is argued that he does not deserve to be allowed.

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

9. The facts which emerge out of the record and which are not in dispute are that the victim had attained the age of majority on 22.09.2023 and on the very next day, she had left her house along with some cash, gold as well as silver ornaments and just a few days thereafter, she along with the petitioner had filed a petition seeking protection of life and liberty from her family members. It has also come on record that since no protection was



granted to the petitioner and the victim by the High Court on 28.09.2023 and the case was adjourned and as the family members of both the parties had reached there, therefore, they were taken to police station Sector 3, Chandigarh and had recorded their respective statements. At that time, the victim not only stated that she had left her house with her own sweet will and had gone to Patiala and that it was she who had called upon the petitioner to come so that they could perform marriage but she had also refused to get her medical examination conducted on that date and even subsequently on 04.10.2023, though she had recorded a statement under Section 164 of Cr.P.C. against the petitioner on that date. However, the very fact that she had been eliminated by her own close relatives i.e. her maternal uncle and aunt shortly thereafter, is apparently indicative of the fact that her relationship with the petitioner was not acceptable to her family members and that also appears to be a cause of her murder. It is a debatable question as to whether the provisions of Section 363 of IPC have been at all attracted as the very basic ingredient for commission of this offence i.e. the victim being a minor is missing since she was a major as on the date of occurrence. So far as the allegation that the petitioner made an attempt to commit rape upon her is concerned, the victim had refused to get her medical examination conducted on 28.09.2023 and even on 04.10.2023. Her statement under Section 164 of Cr.P.C. is not in consonance with her statement as recorded before the police on 28.09.2023 at the time of registration of DDR No. 61 at police Station Sector 3, Chandigarh. There is no basis for the contention that the petitioner may intimidate the witnesses. He is in custody since



16.10.2023. The trial is likely to take time. At this stage, it is not appropriate for this Court to give any opinion about the merits of the case which, however, raise many debatable issues. Therefore, keeping in view the above discussed facts and circumstances of the present case, the period spent by the petitioner in custody and the nature of the allegations as levelled against him but without meaning to make any comment on the merits of the case, I am of the considered opinion that the petitioner deserves to be extended benefit of bail during the pendency of the trial. 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.

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

[MANISHA BATRA]
JUDGE

30th May, 2024
Parveen Sharma

- | | | |
|-------------------------------|---|----------|
| 1. Whether speaking/ reasoned | : | Yes / No |
| 2. Whether reportable | : | Yes / No |