



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

203

CRM-M-22679-2024

Date of Decision: 10.05.2024

Kuldeep @ K.D

.... Petitioner

Versus

State of Haryana

.... Respondent

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present: - Ms. Monita Mehta, Advocate for the petitioner.

Mr. Surinder Kumar Dagar, DAG, Haryana.

NIDHI GUPTA, J. (ORAL)

The petitioner has filed the present 1st petition under Section 439 of the Code of Criminal Procedure, 1973, for grant of regular bail in case FIR No. 85 dated 28.02.2023 (Annexure P-2) registered under Sections 363, 366A, 376D, 376(2)(n) and 506 IPC and Section 6 of the Protection of Children from Sexual Offences Act, 2012, at Police Station Kaithal City, District Kaithal.

The aforesaid FIR was registered on the basis of a complaint moved by the mother of the victim, which is reproduced as under:-

“..... That I Sudesh wife of Surendera son of Premchand permanent resident of House no 4/1 near railway gate ward no. 22 Valmiki Basti Kaithal. I have 2 Girls and 2 Boys. The eldest boy Harjas is married, Younger to him is Komal, another girl younger to Komal is Kxxxx age around 17 years, youngest of all is Bhavishya. That Kuldeep @ K.D @ Prince father name unknown resident of Balaji colony Subhash Nagar Kaithal who usually visited the Railway



station with my daughter Kxxxx during that somehow he got my daughter's phone no. 7082750915 and started talking with her over the phone and started luring my daughter with his words. On dated between 15 October to 20 October on the occasion of Ahoi Ashtami that my daughter time around 7-8 at night coming home after work then Kuldeep @ K.D. @ Prince took my daughter with him on his motorcycle and took her to some Cafe where he and his two unknown friends did wrong act with my daughter Kxxxx and threatened my daughter to kill her and her family if she told anyone about this. Today my daughter told me about all these things and told be that Kuldeep @ K.D. @ Prince and his friends did wrong act with her and I did not tell anyone about this due to fear. Today my daughter worriedly told that in October 2022 on the occasion Ahoi Ashtami, Kuldeep @ K.D @ Prince took her to the Royal Cafe by luring her and he and his friends did a wrong act with her. Today due to pain in my daughter's stomach, I tested her with the pregnancy kit and found her Pregnant and that there is fetus in my daughter's stomach. Above mentioned persons did a wrong act by luring my daughter, take legal action against him.... ”

Learned counsel for the petitioner, *inter alia*, submits that the petitioner and the victim were in a consensual relationship. As per the version of the complainant in the FIR (Annexure P-2); and also as per the statement of the victim recorded under Section 164 Cr.P.C. (Annexure P-4); as well as in her testimony as PW-1 (Annexure P-7) before the learned trial Court, it has been admitted that the victim was about 17½ years old at the time of occurrence; and that she had '*friendly relations*' with the petitioner. Learned counsel for the petitioner contends that as per the averments made in the FIR itself, the date of occurrence was between 15.10.2022 and 20.10.2022; whereas the FIR was registered several months thereafter, on 28.02.2023. It is submitted that the reason given by the complainant for this delay is that it was only when it was discovered that the victim is pregnant that her mother/complainant came forth to register the present FIR. Further, it is submitted that FSL report



(Annexure P-6) is negative, as no semen was detected on the exhibits submitted by the victim and DNA report is awaited. The petitioner has been in custody since 21.02.2023. The trial is likely to take a long time to conclude. Thus, it is prayed that petitioner be released on regular bail.

Per Contra, learned counsel for the State vehemently opposes the prayer for grant of regular bail to the petitioner and submits that the victim in her statement (Annexure P-4) recorded under Section 164 Cr.P.C. has fully supported the case of the prosecution; and stated that offence under Section 376(2)(n) IPC was made out against the petitioner and 02 other accused. Although, the other 02 accused were not named in the FIR, however, their names have come into picture on the basis of disclosure statement suffered by the present petitioner. The said 02 accused persons are admittedly on bail, as they were not identified by both, the victim as well as the complainant in Court. It is further submitted that the pregnancy of the victim was terminated and DNA report is awaited.

Learned counsel for the State has filed custody certificate dated 10.05.2024, which is taken on record, as per which the petitioner has been in custody as an undertrial for a period of 01 year, 01 month and 18 days. On instructions from ASI Kuldeep Singh, learned counsel for the State informs that out of total 27 prosecution witnesses, 02 witnesses i.e. the victim and the complainant have been examined by the learned trial Court so far.

Having heard learned counsel for the parties, but without commenting on merits of the case, however, keeping in view the totality



of the facts and circumstances of the case; including the custody period undergone by the petitioner; and the fact that material witnesses i.e. the victim and complainant have already been examined; and also the fact that conclusion of trial will take considerable time as out of total 27 prosecution witnesses only 02 have been examined so far, and no useful purpose would be served by further detention of the petitioner. Thus, the present petition is **allowed**.

The petitioner-Kuldeep @ K.D S/o Kitab Singh, is ordered to be released on regular bail on his furnishing bail/surety bonds to the satisfaction of the trial Court/Chief Judicial Magistrate/Duty Magistrate, concerned.

However, it is made clear that nothing stated above shall be construed as an expression of opinion on the merits of the case.

10.05.2024
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(NIDHI GUPTA)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No