



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

201

CRM-M-22809-2024

Date of Decision: 28.05.2024

Pratham Sharma

.... Petitioner

Versus

State of Haryana

.... Respondent

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present: - Mr. Tarun Sharma, Advocate for the petitioner.

Mr. Surinder Kumar Dagar, DAG, Haryana.

Ms. Ojaswini Gagneja, Advocate for the Victim.

NIDHI GUPTA, J. (ORAL)

On 10.05.2024, when this case was listed for hearing before
this Court, following order was passed:-

“Vakalatnama filed on behalf of the Victim in Court
today is taken on record.

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. 687 dated 17.12.2022,
registered under Sections 346 IPC [Sections 120-B, 346,
354D, 376(2)(n), 376(d) and 509 IPC were added later on] at
Police Station Pinjore, District Panchkula, Haryana.

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

“..... *Subject: Application for missing of the daughter. Sir, it
is requested that my daughter xxxx aged 22 year, had left*



from the home today at 10.00 AM for Kalka for computer course, as usual. She has not come back till evening. At about 3 PM, a phone from mobile No. 9729793925 was received on the mobile No. 74960933661 of my niece Ranjana that daughter would reach home very shortly. When I tried to call on this number, then that phone is switched off. The mobile number 6230288046 is also switched off. My daughter Aarti, aged 22 years, has gone somewhere without informing anyone. Kindly trace her. Her appearance is:xxxx, aged 22 years, colour wheatish, height 5 feet, face round, worn blue colour salwar shirt.....”

Learned counsel for the petitioner, *inter alia*, submits that the petitioner and the victim were in a consensual relationship. In this regard, learned counsel for the petitioner refers to the second statement recorded by the victim under Section 164 Cr.P.C. on 17.03.2023 (Annexure P-4) (at page 27 of the paper-book), wherein she has stated as follows:

“Mohit had sex with me many times without my consent. Rajesh was cooperating with Mohit. I want to live with Pratham. I love Pratham. Whatever happened between Pratham and me, it was with my consent. My family members are against the my relationship with Pratham.”

Learned counsel for the petitioner very fairly points out that in her first statement recorded under Section 164 Cr.P.C., on 20.12.2022 (Annexure P-3), the victim has stated that the petitioner herein had blackmailed her by saying that he would make viral her compromising photographs and videos, and initiated physical relations with the victim against her wishes under the said threat. However, it is contended that in view of the second statement (Annexure P-4), the first statement is negated. Further, it is submitted that although, charges have been framed by the learned trial Court as far as back on 22.05.2023, in a span of almost one



year, out of 22 prosecution witnesses only one witness i.e. the victim has been examined, in part.

Learned counsel for the petitioner further informs that at the time of alleged occurrence, the petitioner was 20 years of age; whereas the victim was 22-year-old. The aforesaid FIR was lodged on account of the fact that the victim was went missing on 17.12.2022 and she was recovered on 20.12.2022 from Paonta Sahib; whereas at that time admittedly, the petitioner was in Kalka. The petitioner has been in custody since the date of his arrest i.e. 20.12.2022. 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 complainant vehemently opposes the prayer for grant of regular bail to the petitioner and submits that the petitioner and his co-accused, namely, Mohit and Rajesh, all had threatened the victim that they all possessed her compromising photographs and videos and committed rape upon the victim against her wishes.

When it is pointed out that one of the co-accused, namely, Rajesh was exonerated during investigation and subsequently, even application under Section 319 Cr.P.C., qua Rajesh filed by the complainant also stood dismissed, learned counsel for the complainant submits that said order has been challenged by the complainant by way of a petition bearing CRM-M-21069-2024, titled as 'AXXX vs. State of Haryana and another', before this Court and notice of motion was issued by a co-ordinate Bench of this Court in the said petition vide order dated 29.04.2024. Copy of order dated 29.04.2024, is taken on record. It is submitted by learned counsel for the complainant that if the petitioner is released on bail and so far, only examination-in-chief has been conducted in part of the victim, there is every possibility that he will threaten the victim.



Learned counsel for State also opposes the prayer for grant of regular bail to the petitioner and refers to the testimony of victim as PW-1 (Annexures P-6 and P-7) and submits that very specific allegations have made by the victim against the petitioner, inasmuch as, she has stated in her statement that the petitioner had approached her for talking with him, when the victim had refused to talk with him, then the petitioner showed her the photographs and videos which were in the possession of Mohit. The victim has further stated that on the basis of these pictures the petitioner also blackmailed her and taken her to a hotel.

On instructions from ASI Didar Singh, learned counsel for the State further submits that during investigation, 04 mobile phones belonging to the petitioner, victim, co-accused-Mohit and one from the sister of the victim were taken into possession and all 04 of which have been sent to Forensic Science Laboratory and report in this regard is still awaited. He further informs that cross-examination of the victim is still pending and the next date of hearing before the learned trial Court for the said purpose is 23.05.2024.

Learned counsel for the State has filed custody certificate dated 08.05.2024, which is taken on record, as per which the petitioner has been in custody as an undertrial for a period of 01 year, 04 months and 17 days.

At this stage, learned counsel for the petitioner points out that the complainant/father of the victim is also not appearing before the learned trial Court for recording his statement and bailable warrants have been issued against him for securing his presence.

Keeping in view the totality of the entire facts and circumstances of the case enumerated here-in-above, this Court is of the opinion that for proper adjudication of the



case in hand, the present matter be adjourned to **28.05.2024**.

In the meantime, the learned trial Court is directed to conclude the evidence of the victim on the next date of hearing i.e. 23.05.2024.”

Learned counsel for the parties have informed that pursuant to the last order dated 10.05.2024, evidence of the victim was completed on 23.05.2024 and a copy of the cross-examination of the victim is supplied by learned counsel for the petitioner, which is taken on record. Learned counsel submits that a perusal of the said cross-examination shows that the victim has again made contradictory statements.

Learned counsel for the State assisted by learned counsel for the Victim, vehemently oppose the prayer for grant of regular bail to the petitioner and submit that the victim had supported the case of the prosecution at all times.

Learned counsel for the State has filed custody certificate dated 27.05.2024, which is taken on record, as per which the petitioner has been in custody as an undertrial for a period of 01 year, 05 months and 06 days. As per custody certificate, there is no other case against the petitioner.

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 of 01 year, 05 months and 06 days undergone by the petitioner as an undertrial, and perusal of the custody certificate reveals that there is no other case against the petitioner; and also the fact that out of total 22 prosecution witnesses, only 01 witness i.e. the victim/material witness



has been examined so far, therefore, conclusion of trial will take considerable time; and no useful purpose would be served by further detention of the petitioner. Thus, the present petition is **allowed**.

The petitioner-Pratham Sharma S/o Davinder Sharma, 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.

Pending application(s), if any, shall also stand disposed of.

28.05.2024
rishu

(NIDHI GUPTA)
JUDGE

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