



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

205

CRM-M-23674-2024

Date of Decision: 22.05.2024

Dinesh Kumar

.... Petitioner

Versus

State of Haryana and another

.... Respondents

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present: - Mr. Shantanu Bansal, 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. 508 dated 05.12.2023 (Annexure P-1), registered under Sections 328, 343, 363, 366 and 376(2)(n) IPC (initially, the present FIR was registered under Section 346 IPC and all the other aforesaid sections were added later on) at Police Station Sirsa Sadar, District Sirsa.

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

“To the Station House Officer, that I am Ishwar Singh son of Chandgi Ram resident of Rahmat Colony, Street No. 05, Arniawali Road, Sirsa, my granddaughter xxxx, daughter of Rajesh Kumar studying in 10+2 in Geeta Senior Secondary School, Sirsa, who is about 19 years 3 months old. That my granddaughter xxxx left home without any intimation in the night of 04/05.12.2023. We searched her at our own, but did not find her anywhere. My granddaughter xxxx is either hiding on her own or some had kidnapped her. My granddaughter xxxx appearance is as under: Whitish skin,



round face, strong body, height is about 5 feet and is wearing black coloured lower and pink coloured t-shirt. She has mobile number 9468274522, who be searched and legal action be taken as per rules.....”

Learned counsel for the petitioner, *inter alia*, submits that initially, the present FIR was registered only under Section 346 IPC with the allegation that the victim was not found and, therefore, a search was conducted and when she was not traceable, then the present FIR came to be registered. It is submitted that, in actual fact, the petitioner and the victim were in a consensual relationship, and even they have filed a petition bearing CRWP-11852-2023 before this Court seeking protection for their lives and liberty, which was allowed by a co-ordinate Bench of this Court vide order dated 08.12.2023 (Annexure P-4). It is stated that the petitioner and the victim even had solemnized marriage on 05.12.2023, as is evident from the marriage certificate of even date, i.e., 05.12.2023 (Annexure P-5). Learned counsel submits that statements of both the victim and the petitioner dated 12.12.2023 (Annexure P-2) have also been recorded, whereupon it was decided that, keeping in view their young age, they shall reside separately, however, they were permitted to meet each other with the permission of family members.

Learned counsel for the petitioner submits that thereafter, statement of the victim dated 19.12.2023 (Annexure P-7) was recorded under Section 161 Cr.P.C., wherein for the first time she had made the allegation(s) that in the intervening night of 04/05.12.2023, the petitioner had allured the victim and sprayed some intoxicant on her face, whereupon he had taken her away with him, while she was not totally



unconscious. It is submitted that the same allegations were reiterated by the victim in her statement dated 21.12.2023 (Annexure P-8) recorded under Section 164 Cr.P.C. Thus, it is submitted that after recording the aforesaid statements of the victim offence under Sections 328, 343, 363, 366 and 376(2)(n) IPC were added in the present FIR. In view of the above, it is contended that no offence under Section 376(2)(n) IPC is made out against the petitioner. The petitioner has been in custody since 23.12.2023. It is prayed that the petitioner be released on regular bail.

Per Contra, learned counsel for the State vehemently opposes the prayer for the grant of regular bail to the petitioner. Learned counsel for the State has filed custody certificate dated 21.05.2024, which is taken on record, as per which the petitioner has been in custody as an undertrial for a period of 04 months and 28 days. As per custody certificate, there is no other case against the petitioner.

On instructions from L/ASI Kiranpal Kaur, learned counsel for the State informs that in the present case charges have been framed on 24.04.2024 and the next date of hearing before the learned trial Court is 13.08.2024.

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 04 months and 28 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 the fact that 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-Dinesh Kumar S/o Sardar 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.

22.05.2024
rishu

(NIDHI GUPTA)
JUDGE

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