



206 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-24044-2024 (O&M)
Date of Decision: 12.07.2024

FIROZ MALIK

.....PETITIONER

Vs.

STATE OF HARYANA AND ANOTHER

.....RESPONDENTS

CORAM: HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN

Present:- Mr. Ankur Lal, Advocate,
for the petitioner.

Mr. Kirpal Singh Thakur, A.A.G., Haryana.

HARPREET KAUR JEEWAN J.

1. The present petition has been filed under Section 439 Cr.P.C. for grant of regular bail to the petitioner in case bearing FIR No.338, dated 28.08.2023, under Sections 376, 506 and 328 of the IPC read with Section 120-B thereof, registered at Women Police Station, NIT Faridabad.

2. As per the prosecution version, on 04.02.2023, the petitioner was introduced to the prosecutrix by his co-accused when the prosecutrix went to Delhi in a school function. On 26.08.2023, the petitioner called the prosecutrix and she was taken from Chandigarh to Faridabad in a car which was driven by the co-accused of the petitioner. The petitioner took the prosecutrix in a hotel. The prosecutrix presumed the food and the cold coffee brought by the petitioner and thereafter, the prosecutrix felt dizzy and the petitioner is alleged to have committed rape upon her and also extended threats to kill her and her parents. After the prosecutrix reached home, she



disclosed the matter to her mother and thereafter, the matter is reported to the police.

3. Learned counsel for the petitioner *inter alia* contends that the prosecutrix has not fully supported the case in her statement recorded during the trial (Annexure P-2) and she was declared hostile by the Public Prosecutor. The mother of the prosecutrix while appearing as PW-2 has also not supported the version of case in her statement recorded during trial (Annexure P-3). The father of the prosecutrix has been given up by the Public Prosecutrix as per statement (Annexure P-4). The material witnesses have been examined. The petitioner is in custody since 28.08.2023.

4. A reply, dated 05.07.2024, by way of an affidavit of Sh. Virender Singh, HPS, Assistant Commissioner of Police, Badkhal, Faridabad, along with the statement of the victim and report of the RFSL as Annexures R-1 and R-2, has already been filed by learned State counsel. The same is taken on record.

4.1 Learned counsel for the State has opposed the present petition. It is submitted that initially the prosecutrix has supported her case in the examination recorded on 27.03.2024, including her cross-examination conducted on that day. However, subsequently, during further cross-examination which was conducted on 18.04.2024, she was declared hostile and was re-examined by the Public Prosecutor. Public Prosecutor further contends that the prosecutrix has supported the prosecution case even in the statement recorded under Section 164 Cr.P.C. (Annexure R-1). However, this fact has been confirmed that semen could not be detected as per the report of the Forensic Science Laboratory, Gurugram (Annexure R-2).



5. I have considered the aforesaid facts and circumstances of the present case.
6. The Material witnesses have already been examined. The mother of the prosecutrix has not supported the version of the case. There are contradictions in the statement of the prosecutrix recorded under Section 164 Cr.P.C and as recorded during the trial. The age of the petitioner is 24 years. The prosecutrix is also major and she has disclosed her age as 18 years in the statement recorded under Section 164 Cr.P.C. (Annexure R-1). The conclusion of the trial is going to take time. The petitioner is in custody since 28.08.2023.
7. Keeping in view the above and without making any comment on the actual merits of the case, the present petition is allowed. The petitioner is ordered to be released on regular bail, subject to his furnishing adequate bail bonds and surety to the satisfaction of the trial Court/Duty Magistrate concerned.
8. It is made clear that nothing observed hereinabove will be taken to be an observation on the actual merits of the case, which would be gone into by the learned trial Court wholly on the basis of evidence led/gathered before it.
9. Pending miscellaneous application(s), if any, shall also stand disposed of.

July 12, 2024
nitin

(HARPREET KAUR JEEWAN)
JUDGE

Whether Speaking	Yes
Whether reportable	No