

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M No.25826 of 2023 (O&M)
Date of Decision: 30.01.2024

Rahul ... Petitioner

Versus

State of Haryana ... Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Abhishek Jindal, Advocate,
for the petitioner.

Mr. Neeraj Poswal, AAG, Haryana,
for the respondent-State.

MANISHA BATRA, J.(Oral)

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

FIR No.	Dated	Police Station	Sections
98	17.03.2021	Badshahpur, District Gurugram, Haryana	6 and 8 of Protection of Children from Sexual Offences Act, 2012 (For short “POCSO Act”) and 363, 366, 328, 506 and 34 of IPC

2. The facts relevant for the purpose of disposal of this petition are that the aforementioned FIR was initially registered under Sections 363 and 366 of IPC on the basis of a written complaint filed by the complainant “K” (name withheld) on 17.03.2021 alleging therein that in the evening of 16.03.2021, the victim (name withheld) who was his 15 years’ old daughter had gone out of house to get some articles and had not returned. A suspicion was raised by him that she had been enticed away by “A”. He shall be referred to now as child in conflict with law

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(CCL) as he was declared a juvenile. As per the further prosecution version, the victim was recovered from Delhi as on 18.03.2021. Her medico legal examination was conducted. Her statement under Section 164 of Cr.P.C. was recorded and thereafter, offences under Sections 328, 506 and 34 of IPC read with Sections 6 and 8 of POCSO Act were added. The CCL “A” and co-accused Ajit, who were named by the prosecutrix were arrested on 26.05.2021. On interrogation, they suffered disclosure statements and demarcated the place of occurrence. The accused Ajit had also recovered a Swift Dzire vehicle which was used for the purpose of enticing the victim away. After completion of inquiry against the CCL, challan against him was presented before Juvenile Justice Board and on completion of investigation as against the accused Ajit, challan was presented against him before the concerned Illaqa Magistrate. The present petitioner was arrested on 15.06.2022. He was also interrogated and suffered disclosure statement admitting his involvement in the case and demarcated the place of occurrence. After completion of necessary investigation, supplementary challan was presented against him qua commission of offences punishable under Section 8 of POCSO Act and Sections 328 and 506 of IPC and presently, he is facing trial for the aforementioned offences.

3. The present petition has been filed by the petitioner Rahul on the grounds and it is argued by his counsel that he has been falsely implicated in this case. He is a young boy of 21 years of age only. Infact, the CCL “A” and the victim were in relationship and wanted to marry. Later on, when it was found that the victim was a minor girl, the parents of “A” had refused to perform his marriage with her and thereafter, this FIR was

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registered. It was also submitted that there was nothing on record to show that the victim had ever remained in the custody of the petitioner. There were no allegations that he had committed rape upon her. Infact, another FIR bearing No.203 dated 18.08.2021 had been lodged against the parents of the victim when they had blackmailed the father of co-accused Ajit and were taking an amount of Rs.1 lac from his parents for making a favourable statement in his favour. The conversation made by the mother of the victim whereby she had been blackmailing the father of the co-accused Ajit had also been recorded and her parents were facing trial in the abovesaid case. He submitted that the victim along with her step father and mother had formed a gang to grab money from innocent persons and this case was also one of such instance.

4. It has been further argued that the medical examination report of the victim does not show evidence of any internal or external injuries having found on her person. As per FSL report, no semen was detected on the vaginal swabs of the victim. More so, there is no material on record to show that the petitioner had administered any stupefying or intoxicating substance to the victim or had tried to molest her. He is in custody since 15.06.2022. The trial is likely to take time. The statements of victim and her step father have been recorded in the trial which is being conducted as against the co-accused Ajit and their statements show that they have implicated the petitioner falsely in this case. It is also argued that no specific allegation of committing rape upon the victim by the petitioner had been levelled and the only allegation was that he had accompanied the co-accused when they had come along with the victim to Delhi and an attempt was

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made by him to commit rape which was not made out from the record. With these broad submissions, it is argued that the petitioner deserves to be extended benefit of bail. It is also argued that the co-accused Ajit whose case is on similar footing has since been extended benefit of bail by the learned trial Court and on the ground of parity, he too deserves to be given concession of bail.

5. The petition is resisted by the State in terms of the status report. Learned State counsel has argued that the allegations against the petitioner are serious as he along with the co-accused enticed the victim who was a minor girl of about 15 years of age, had made her consume some intoxicating substance, had tried to molest her and had also criminally intimidated her. The petitioner who was charge-sheeted for commission of offences punishable under Section 8 of POCSO Act and Sections 328 and 506 of IPC, is facing trial. Three out of twenty witnesses have already examined. The trial might be further expedited and there was nothing on record to show that there would be any undue delay in conclusion of the same. While admitting that a case bearing FIR No.203 of 18.08.2021 has been lodged against the parents of the victim on the allegation of extorting money from the father of the co-accused, it is submitted that the said fact cannot have any bearing on the present case and hence, it is urged that the petition does not deserve to be allowed.

6. I have heard learned counsel for the petitioner as well as learned State counsel at considerable length and have gone through the material placed on record.

7. The petitioner is alleged to have made attempt to sexually

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assault the victim and is also facing charges under Sections 328 and 506 of IPC and Section 8 of POCSO Act. It has also come on record that the accused Ajit who is facing trial separately on the similar allegations has since been extended benefit of bail and the record also reveals that the step father and the mother of the victim have been booked for commission of offences punishable under Sections 120-B and 384 of IPC vide FIR No.203 dated 18.08.2021 registered at Police Station Bhondsi, District Gurugram, on the allegations of extorting money from the parents of co-accused Ajit for the purpose of recording statements in his favour before the Court. Copies of the statements of the victim and her step father as recorded in the trial of co-accused Ajit have been placed on record which show that they have admitted that a criminal case has been registered against the victim and her mother for demanding/extorting money from the accused Ajit and this coupled with the fact that the victim is even shown to have stated that they were apprehended while counting money on that day, creates a doubt that infact the family of the victim had been trying to extort money from the co-accused for the purpose of making some favourable statement in his favour due to which the allegation of this case being a false one cannot be ruled out. The petitioner is in custody since 15.06.2022. The co-accused Ajit against whom similar allegations have been levelled has since been extended benefit of bail. The trial is likely to take time. Keeping in view the nature of the allegations as levelled against the petitioner, the period of his incarceration and the attendant facts and circumstances of the case but without meaning to make any comment on the merits of the case, I am of the considered opinion that he deserves to be extended benefit of bail at this stage. Hence, I allow

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the petition and the petitioner is ordered to be released on bail subject to his furnishing personal/surety bonds to the satisfaction of learned trial Court.

8. However, at the same time, to elevate the bona fide apprehension raised by the prosecution, it is ordered that the petitioner will not enter into or reside within the vicinity wherein the victim is residing until the conclusion of the trial of the case, shall not intimidate or attempt to influence the victim or any other material witness and shall not tamper with the evidence. The petitioner shall not leave India without the previous permission of the Court. In case of violation of any of above condition, the jurisdictional Court concerned will be empowered to consider the application for cancellation of bail of the petitioner, if required and pass appropriate orders in accordance with law.

9. Miscellaneous application(s), if any, also stand disposed of.

30.01.2024
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(MANISHA BATRA)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No