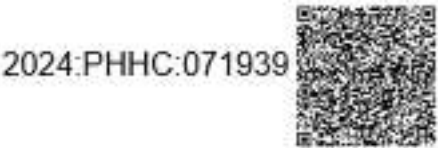


Neutral Citation No. 2024:PHHC: 071939



IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

219

CRM-M-24719-2024 (O&M)
Date of decision: 21.05.2024

Sahil @ Kala

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Samay Singh Ahluwalia, Advocate
For the petitioner.

Mr. Arjun Lakhanpal, Addl. A.G., Haryana.

MANISHA BATRA, J. (Oral)

1. CRM-21597-2024

Allowed as prayed for. Leave granted.

2. CRM-M-24719-2024 (O&M)

This petition has been filed by the petitioner under Section 439 Cr.P.C. seeking regular bail in case bearing FIR No. 468 dated 10.12.2022, registered under Sections 376-D, 120-B, 506 of IPC and Section 6 of the POCSO Act, 2012 at Police Station Kalayat, District Kaihtal.

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3. Brief facts relevant for the purpose of disposal of the instant petition are that the aforementioned FIR was registered on 10.12.2022 on the basis of statement recorded by the complainant “J” (*name withheld*) alleging therein that on the previous night, his minor daughter “N” (*name withheld*) was going towards her paternal uncle’s house for the purpose of attending a wedding function when she was intercepted by the petitioner and co-accused Adarsh and Vinod, who by gagging her mouth and by forcibly taking her to *bara*, sexually assaulted her and ravished her turn by turn. After sometime, when she was not found, search was made and her uncle found her while wailing in the *bara* in a critical condition. The petitioner and the co-accused tried to flee on seeing him. The petitioner was tried to be apprehended but after causing injuries to her uncle and extending threat to kill him, he too fled away from the spot. All three of them were identified by her uncle. After reporting the matter to the police and lodging of FIR, investigation proceedings were initiated. Accused Adarsh was found to be innocent. The petitioner was arrested on 12.12.2022. After completion of necessary investigation and usual formalities, challan under Section 173 of Cr.P.C. was presented in the Court and presently, the petitioner along with co-accused is facing trial for commission of aforesaid mentioned offences. He had moved an application before the trial Court for grant of regular bail but the same had been dismissed, vide order dated 30.04.2024.

4. The present petition has been filed by the petitioner on the grounds and it is argued by his counsel that he has been falsely implicated in this case. Neither the victim nor her father or eye-witness “J” have supported

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the version of the prosecution. All of them have exonerated the petitioner from commission of the subject offences. No mark of injury was found on the person of the victim as per the medico legal examination report. Though, as per DNA report, the semen detected on the Salwar, shirt and under clothing of the victim, which she was allegedly wearing at the time of occurrence, has matched with the DNA profiling of the blood sample of the petitioner but the testimony of the victim falsifies this versions as she admitted that she had not handed over her clothing to the doctor, who had conducted her medical examination at the Govt. Hospital, Kaithal and also denied that she never wore any *Kurta* or *Salwar*. Rather, she had always been wearing western style clothing. The trial is likely to take time. The petitioner is in custody since 12.12.2022. Therefore, it is urged that the petition deserves to be allowed and he deserves to be given concession of bail.

5. Status report has been filed by the respondent-State. Learned State counsel has vehemently argued that keeping in view the gravity of the allegations, the petitioner does not deserve to be extended benefit of bail.

6. I have heard learned counsel for the petitioner and learned State counsel and have gone through the material placed on record carefully.

7. As per the allegations, the victim had been ravished/being subjected to aggravated penetrative sexual assault on the night of 09.12.2022, while she was on way to the house of her paternal uncle to attend some marriage function. The petitioner has placed on record Annexure P-2 to Annexure P-4, which are copies of the depositions of father of the victim, the

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victim as well as the uncle of the victim, who is claimed to be an eye witness. A perusal of the statement of the victim reveals that though she stated that on the fateful night, while she was going towards the house of her uncle, three youths had tried to outrage her modesty but also stated that all three of them were having muffled faces and she could not identify them due to darkness. She further stated that the petitioner and the co-accused were not those persons. She had been declared hostile on request of learned Public Prosecutor and was allowed to be cross-examined by him. Though she admitted that she had been medically examined but denied that her clothing was taken into possession by the Medical Officer and also denied the clothing of the description as mentioned in the medico legal report, or her vaginal swabs were handed over to the police by the Medical Officer. In this manner, she is shown to have given complete go bye to the prosecution case with regard to her being ravished at the hands of the petitioner. Even the eye-witness PW-3 "J" is shown to have stated that he had no knowledge about the case and that no offence was committed by the petitioner and co-accused Sahil with his niece at any point of time.

8. Then though the complainant, who is father of the victim, is shown to have stated that three youths had tried to outrage the modesty of the victim on the night of 09.12.2022, but he too did not support the prosecution version any further and did not identify the petitioner as one of the ravishers of his daughter. Though as per DNA report, the semen detected on the Salwar, shirt and under clothing of the victim has matched with the DNA profiling of the blood sample of the petitioner but the victim has admitted that she had not

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handed over her clothing to the doctor, who had conducted her medical examination at the Govt. Hospital, Kaithal. She had also stated that she never wore any *Kurta* or *Salwar* as she had always been wearing western style clothing. Keeping in view the nature of the evidence that has come on record in the form of testimonies of the material witnesses including that of the victim who have not supported the version of the prosecution, the period of incarceration of the petitioner and the attendant facts and circumstances but without meaning to make any comment on the merits of the case lest the same prejudices the case of the prosecution, I am of the opinion that the petitioner deserves to be released on bail.

9. Accordingly, the present petition is allowed and the petitioner is ordered to be released on regular bail, subject to his furnishing personal/surety bonds to the satisfaction of the trial Court/Duty Magistrate concerned.

10. It is made clear that any observation made herein above is only for the purpose of deciding the present petition and the same shall have no bearing on the merits of the case.

21.05.2024

Waseem Ansari

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	Yes