

Neutral Citation No. 2024:PHHC: 075200



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

214

CRM-M-25725-2024 (O&M)
Date of decision: 27.05.2024

Pushpa ...Petitioner

Versus

State of Punjab and others ...Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

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

Mr. A. S. Samra, AAG, Punjab.

None for respondent Nos. 2 and 3.

MANISHA BATRA, J. (Oral)

1. This petition has been filed by the petitioner under Section 439 Cr.P.C. seeking regular bail in case bearing FIR No. 180 dated 18.08.2020 registered under Section 376 of the IPC and Sections 3 & 4 of Protection of Children from Sexual Offences Act, 2012 (*for short "POCSO Act"*) (Section 6 of POCSO Act and Section 343 of IPC added later on) at Police Station City Fazilka, District Fazilka.
2. Brief facts of the case relevant for the purpose of disposal of the present petition are that the aforementioned FIR was got registered by the complainant "R" (*name withheld*) on the allegations that in the month of February, 2020, his wife had gone to her parental house at Delhi. The victim

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“S” (*name withheld*), who was his minor daughter had also gone there some days thereafter. He alleged that on instigation of the present petitioner, who is mother of the victim, her *Maasi* Sonu as well as one Rajesh Sharma, his daughter had been taken away by the accused Bunty to some unknown place, wherein she was sexually assaulted by the said Bunty after having been kept confined for eight days. He had got the medico-legal examination of his daughter, conducted on 17.06.2020. The reason for recording his statement at delayed stage as given by him was that the victim was diagnosed as Covid-19 positive during the intervening period. After registration of the FIR, investigation proceedings were initiated. The statement of the victim under Section 164 Cr.P.C. was recorded on 17.11.2020. On the basis of supplementary statement of the victim, the present petitioner, who is mother of the victim, her *Maasi* Sonu and Rajesh Sharma were nominated as accused. Accused Bunty was arrested, however, the present petitioner and co-accused Sonu and Rajesh were found to be innocent and had not been arrested and challaned. After completion of investigation, *challan* was presented against accused Bunty and presently he is facing trial.

3. It has come on record that during the course of trial, the prosecutrix moved an application under Section 319 of Cr.P.C. for summoning the present petitioner and co-accused Sonu as additional accused, which was allowed and the present petitioner along with co-accused Sonu was arrested on 10.10.2023 and now she is also facing trial along with the co-accused.

4. It is argued by learned counsel for the petitioner that she has been falsely implicated in this case. In fact, the petitioner had been residing

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separately from her husband/complainant “R” due to matrimonial discord. The petitioner had already lodged FIR No. 160 dated 11.06.2020 under Section 363 of IPC at Police Station Shahdara, District Shahdara (Annexure P-1) as the victim had gone missing on 10.06.2020 from the house of brother of the co-accused Sonu. The FIR of this case had been lodged much thereafter by the complainant, who is father of the victim, to wreak vengeance upon the petitioner, who is his wife and her family members. The main accused Bunty has already been extended the benefit of bail on 16.05.2023. Even similarly situated co-accused Sonu, who was also summoned as additional accused under Section 319 of Cr.P.C., has been granted benefit of regular bail by this Court. Not only this, the victim has again eloped with accused Bunty and has even performed marriage with him. The statement of the victim has since been recorded. The trial is likely to take time. Further detention of the petitioner would not serve any useful purpose. On the ground of parity also, she deserves to be given concession of bail. With these broad submissions, it is urged that the petitioner be released on bail.

5. Learned State counsel has submitted that the petitioner was found to be innocent during investigation and it is only on the basis of an application moved under Section 319 of Cr.P.C that she has been summoned and tried as an additional accused in this case. Learned State counsel has, however, submitted that there are chances of petitioner's absconding or tampering with the evidence, if extended benefit of bail and, therefore, it is urged that petition does not deserve to be allowed.

6. I have heard learned counsel for the petitioner as well as learned State counsel and have perused the record carefully.

7. As per the allegations levelled in the FIR of this case, on 09.06.2020, the victim, who was staying along with the petitioner at Delhi in the parental house of the latter had been forcibly sent along with co-accused Bunty by the co-accused Sonu as well as by the present petitioner and the abovesaid Bunty after keeping her confined at some unknown place for a period of eight days, had ravished her, had committed offence of penetrative sexual assault upon her. The petitioner has placed on record Annexure P-3 which is copy of order dated 09.06.2023 passed in CRWP No. 5833 of 2023 by a Coordinate Bench of this Court. A perusal of which shows that the victim and the co-accused Bunty had filed a petition seeking protection of their lives and liberty on the ground that they had performed marriage on 07.06.2023 and were apprehending danger to their lives at the hands of their family members. It is not in dispute that the co-accused Bunty has since been extended benefit of bail and also that the victim has again gone with him and has performed marriage with him. It is also not disputed that co-accused Sonu, whose case is on the similar footing with that of the petitioner, has been granted concession of regular bail by this Court. The petitioner had been summoned as an additional accused in this case in pursuance of allowing of application under Section 319 of Cr.P.C. As such, neither her custodial interrogation is required nor any recovery is to be or can be effected from her. Investigation has since been completed. The trial is likely to take time. In view of the fact that the petitioner had already lodged FIR under Section 363 of IPC when the victim had gone missing, it is a debatable question as to whether the petitioner had any hand in going away of the victim. The petitioner is in custody since 10.10.2023. Her further detention would not serve any useful purpose.

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Keeping in view the aforesaid facts and circumstances, I am of the considered opinion that the present petition deserves to be allowed and the petitioner deserves to be given benefit of regular bail.

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

9. 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.

27.05.2024

Waseem Ansari

(MANISHA BATRA)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether reportable</i>	<i>Yes</i>