

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

214

CRM-M-26394-2023 (O&M)
Date of decision: 12.03.2024

Yogesh Kumar

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Anuj Balian, Advocate
for the petitioner.

Mr. Neeraj Poswal, AAG, Haryana.

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. 78 dated 05.07.2021, registered under Sections 10, 4, 6 of the POCSO Act, 2012 at Women Police Station, Panchkula.
2. Brief facts of the case relevant for the purpose of disposal of the present petition are that the aforementioned FIR was registered on the basis of complaint filed by 'R' (*name withheld*), father of the victim, alleging therein that the victim 'S' (*name withheld*) was his 13 years' old daughter. On 04.07.2021, she disclosed to him that on 12.06.2021 and 16.06.2021, respectively, a boy, who is known by the name of Mangu @ Don, had

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committed rape upon her while extending threat to kill her brother, him and herself. The victim was medically examined. Her statement under Section 164 Cr.P.C. was also recorded, wherein she reiterated the allegations as levelled in the FIR. During the course of investigation, the said accused was arrested. He suffered disclosure statement admitting his involvement in the crime of ravishing the victim and also disclosed that the present petitioner Yogesh Sharma @ Shantanu, who was his friend, had previously ravished the victim and this fact had been told to him and even the phone number of the victim had also been given by him and thereafter, he had started calling the victim and extending threats to her and then ravished her. Thereafter, the present petitioner was also arrested on 13.07.2021. After completion of necessary investigation and usual formalities, challan under Section 173 Cr.P.C. was presented and presently, the petitioner, along with the co-accused, is facing trial for commission of aforementioned offences. He had moved an application for grant of regular bail before the trial Court but the same had been dismissed, vide order 03.05.2023.

3. It is argued by learned counsel for the petitioner that he was not named in the FIR. Even in her statement recorded under Section 164 Cr.P.C., the victim had not taken the name of the present petitioner. It was only on the basis of the disclosure statement of co-accused that he had been implicated in this case. No medical evidence has come on record against the petitioner to connect him with the crime of rape upon the victim. In fact, the petitioner was in love with the victim but under the pressure of her family members, she made a statement against him. It is also submitted that he is in custody since long. The trial is likely to take time. The prosecutrix has already been

examined. There are no chances of the petitioner's intimidating the witnesses. Therefore, it is argued that the present petition deserves to be allowed and the petitioner deserves to be given benefit of bail.

4. Status report has been filed by the respondent-State, as per which, the allegations against the petitioner are serious in nature. It was a fact that in her statement recorded under Section 164 Cr.P.C., the prosecutrix had not named him but in her sworn deposition as recorded before the Court, she has fully supported the prosecution version. Therefore, it is argued that the petitioner does not deserve to be given benefit of bail.

5. I have heard learned counsel for the parties at considerable length and have also gone through the material placed on record.

6. As per the allegations levelled in the FIR, the co-accused Ravinder @ Mangu had committed the act of aggravated penetrative assault/rape upon the prosecutrix on 12.06.2021 and 16.06.2021 and she had disclosed about this fact to her father, who had lodged FIR against him. In her statement recorded under Section 164 Cr.P.C., the prosecutrix had also deposed that the co-accused had ravished her and used to call her on her on regular basis and harassed her but in her statement recorded under Section 164 Cr.P.C., she is also shown to have stated that it was the present petitioner, who had shared her phone number with the co-accused Mangu. Undisputedly, she did not level any allegation as against the present petitioner at the time of recording of her statement under Section 164 Cr.P.C. However, in her statement as recorded before the trial Court, copy of which has been annexed as Annexure P-6, she is shown to have categorically stated that the present petitioner used to give her tuition at his residence and at that time, he had

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sexually harassed her initially and then ravished her and it was him, who had communicated her mobile phone number to the accused Ravinder @ Mangu, who had subsequently started harassing her and had also ravished her. The allegations against the petitioner are serious in nature. The trial has commenced and there is nothing on record to show that there would be any undue delay in conclusion of the same. The plea as taken by the petitioner that the prosecutrix was having a love affair with him and it was only under the pressure of her parents that she had implicated in this case, has no basis. The gravity of an offence is the main consideration for the purpose of extending/denying the concession of bail to an accused. Keeping in view the serious nature of the allegations, which have been levelled against the present petitioner, the quantum of sentence which the conviction may entail and the attendant facts and circumstances, this Court is of the considered view that the petitioner does not deserve to be given concession of regular bail. Hence, the petition stands dismissed.

7. It is made clear that the observations made hereinabove are only for the purpose of deciding the present petition and the same shall not be construed as an expression of opinion on the merits of the case.

12.03.2024

Waseem Ansari

(MANISHA BATRA)
JUDGE

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