

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

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CRM-M-26790-2023 (O&M)
Date of decision: 06.02.2024

Lalit Kumar

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Gaurav Gupta, Advocate
for the applicant-petitioner.

Mr. Neeraj Poswal, AAG, Haryana.

MANISHA BATRA, J. (Oral)

1. CRM-44467-2023

Allowed as prayed for.

Documents are taken on record as Annexures P-7 to P-11.

2. CRM-M-26790-2023 (O&M)

This is the second petition that has been filed by the petitioner under Section 439 Cr.P.C. seeking regular bail in case bearing FIR No. 400 dated 04.12.2021, registered under Sections 363, 366-A of IPC (Sections 323, 506 of IPC and Section 6 of the POCSO Act were added later on) at Police Station Central Faridabad, District Faridabad.

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The first petition filed by the petitioner, bearing CRM-M-35881-2022, was dismissed as withdrawn on 12.12.2022.

3. Brief facts of the case relevant for the purpose of disposal of this petition are that the aforementioned FIR was registered on 04.12.2021 on the basis of a written complaint submitted by the mother of the victim 'J' (*name withheld*), who was aged about 16 years, alleging therein that on 03.12.2021, her daughter had been enticed away by the petitioner, who resides in her neighbourhood, on the pretext of performing marriage with her. Investigation proceedings were initiated. The victim was recovered by the police. Her statement under Section 164 Cr.P.C. was recorded, wherein she disclosed that the petitioner, after making her consume some stupefying substance, had taken her to Dehradun and had committed rape upon her. On the basis of her statement, offences under Sections 323, 506 of IPC and Section 6 of the POCSO Act were added. The victim was medico-legally examined. The petitioner was arrested on 20.01.2022. He was also medico-legally examined. After completion of necessary investigation and usual formalities, challan under Section 173 Cr.P.C. was presented in the Court and presently, the petitioner is facing trial for commission of the aforesaid offences. He had moved an application for grant of regular bail before the trial Court but the same was dismissed, vide order dated 10.03.2023.

4. The present petition has been filed by the petitioner on the grounds and it has been argued by his counsel that he has been falsely implicated in this case. In fact, the victim and the petitioner were in love with each other. The victim had voluntarily and willingly left her home on 03.12.2021 and had performed marriage with the petitioner on 07.12.2021.

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She had stayed with the petitioner at Dehradun upto 18.01.2022 with her own free will and consent and without any fear or pressure from his side. The trial is likely to take some time. The statements of the victim and her mother have been recorded before the trial Court, therefore there are no chances of the petitioner's intimidating them. No record regarding age of the victim has been collected by the prosecution to prove that she was a minor as on 04.12.2021. The victim had claimed her to be a student of D.C. Model Senior Secondary School, Sector 9, Faridabad upto 5th Class but information sought by the petitioner under the RTI Act from that school had revealed that she had never been a student of said school, which falsified her claim. It is, therefore, argued that neither a case of kidnapping/abduction of the victim by making inducement to perform marriage with her have been made out as against the petitioner nor the allegations that he had committed aggravated penetrative sexual assault/rape upon her have been made out as it was not proved that she was a minor. Learned counsel for the petitioner has also drawn attention of this Court towards certain photographs (*Annexure P-2 Colly.*), wherein the petitioner and the victim are shown together in comfortable postures. It is also submitted that the petitioner is in custody since 20.01.2022. The trial is likely to take some time. No useful purpose would be served by keeping him in custody anymore. Therefore, it is argued that the present petition deserves to be allowed.

5. *Per contra*, learned State counsel has resisted the petition by submitting that there are serious and specific allegations against the petitioner, who had enticed away and kidnapped the victim, after making her consume some intoxicating substance, and had repeatedly ravished her/committed

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offence of aggravated penetrative sexual assault upon her. The victim as well as her mother had made depositions against him. There is nothing on record to show that there would be any undue delay in conclusion of trial. The petitioner has also not brought on record anything to show that the victim was not a minor at the time of incident. Hence, it is urged that the petition is liable be dismissed.

6. I have heard learned counsel for the parties at considerable length and have also perused the material placed on record.

7. The petitioner is alleged to have enticed away/kidnapped the victim, who is stated to be a minor, aged about 16 years, and is further alleged to have made her consume some intoxicating substance and then taken her away to Dehradun, wherein she was kept confined by him in a room and was subjected to aggravated penetrative sexual assault/rape several times. The petitioner has claimed that they were in love and had performed marriage and the victim had voluntarily and willingly left her home and had stayed with him. He has placed on record some photographs in order to show that they were in a comfortable position and that there was a good chemistry between them. As per the petitioner, the victim was not a minor and the claim made by her that she had studied in aforesaid school has not been found to be correct as per information sought by his counsel from the said school under the RTI Act and it is also alleged that the victim has made material improvements in her statement as recorded before the Court, thereby making her version unreliable but in the considered opinion of this Court, since the victim is shown to have stated that she had been forcibly taken away by the petitioner and had been subjected to rape and was then kept confined by him, therefore, it cannot be

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stated at this stage that the victim was not a minor or was not subjected to rape. The consent of the victim, even if assumed, cannot be stated to be of any consequence as it is well settled proposition of law that consent of a minor is immaterial. There is nothing on record to show that there would be any undue delay in conclusion of trial. The DNA report is still awaited. The question as to her age will be determined by the trial Court on the basis of the evidence available on record before it at the appropriate stage. Keeping in view the gravity of offences alleged to have been committed by the petitioner, the quantum of sentence which the conviction may entail and the attendant facts and circumstances of the case, 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.

8. 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.

06.02.2024

Waseem Ansari

(MANISHA BATRA)
JUDGE

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