



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

202

CRM-M-27312-2024

Date of Decision: 31.05.2024

Khalil @ Khaleel

.... Petitioner

Versus

State of Haryana

.... Respondent

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present: - Mr. Arun Kumar, Advocate for the petitioner.

Mr. Surinder Kumar Dagar, DAG, Haryana.

NIDHI GUPTA, J. (ORAL)

The petitioner has filed the present 2nd petition under Section 439 of the Code of Criminal Procedure, 1973, for grant of regular bail in case FIR No. 435 dated 26.12.2022 (Annexure P-1) registered under Section 6 of the Protection of Children from Sexual Offences Act, 2012 and Section 506 IPC at Police Station Sector-5, District Gurugram.

The aforesaid FIR (Annexure P-1) was registered on the basis of a complaint moved by the mother of the victim, which is reproduced as under:-

“To the SHO, P.S Sector-5 Gurugram. It is humbly submitted that I am Sxxxx wife of Cxxxx R/o Village Rajapur, P.S. Jagirabad P.O Jakhena, Tehsil Sikarpur District Bulandsehar U.P, presently residing at House No. 20-B, Gali. No. 1, Ashok Vihar Phase – 1 Gurugram on rent in the house of owner Sonu. I am 40 years old and my husband is working as a labour and I am working as maid. I have 5



daughters and 2 sons. That my youngest daughter XXXX is 15 years old and had studied up-to 5th class and is in talking terms with Khalil who is also working at the place. He deals in R.O work. Yesterday on 25.12.2022 at about 5 PM, when my daughter did not reach home and I started looking for her. I found her in the rented house of Priyanka and Anil along with Khalil. When my daughter Pxxx and her husband Axxxx asked my daughter xxxx(victim) then she disclosed that Khalil had committed rape upon her by criminally intimidating her and had been raping her for the last 6 months and extended threats with dire consequences if she disclosed it to anyone. Legal action be taken against the accused...”

Learned counsel for the petitioner, *inter alia*, submits that in actual fact the victim and the petitioner were in a consensual love affair and the victim wants to solemnize marriage with the petitioner. However, family of the victim are against the present relationship, as the petitioner is a Muslim; whereas the victim belongs to Hindu religion. It is submitted that at the time of incident, the victim was more than 18 years of age, as is evident from the copy of voter card (Annexure P-6) of the victim, wherein her date of birth has been mentioned as 17.02.2004; as also from (Annexure P-7) which is a copy of PAN Card of the victim, wherein date of birth of the victim again shown to be 17.02.2004. It is stated that the date of alleged incident is 25.12.2022, therefore, it is evident from both the aforesaid documents that at the time of incident the victim was 18 years and 10 months old.

Learned counsel for the petitioner further submits that the victim in her testimony (Annexure P-4) as PW-4 before the learned trial Court, had categorically stated that she got recorded her statement under Section 164 Cr.P.C., wherein she had incriminated the petitioner due to



pressure exerted upon her by her family members. However, in her testimony she has turned hostile. Learned counsel for the petitioner also refers to the deposition of father of the victim as PW-10 before the learned trial Court (Annexure P-5); wherein he too has turned hostile. However, it is pointed that mother of the victim has supported the prosecution case in her testimony before the learned trial Court. The petitioner has been in custody since his arrest on 26.12.2022. Thus, it is prayed that the petitioner be released on regular bail.

Per Contra, learned counsel for the State vehemently opposes the prayer for grant of regular bail to the petitioner and submits that at the time of incident, the victim was minor being 16 years of age. It is stated that age of the victim was determined on the basis of her school record. It is submitted that the FSL as well as the DNA reports have come positive and DNA has been matched with the clothes of the victim. However, as per MLR, no injury was found on the person of the victim.

Learned counsel for the petitioner counters to aforesaid submission of learned counsel for the State qua date of birth of the victim and submits that incorrect reliance has been placed upon the school record of the victim, as according to the testimony of School Teacher of the victim who while appearing in the witness-box as PW-5 before the learned trial Court, had admitted that during the admission of victim in the school, no certificate issued by the Government Authorities depicting the date of birth of the victim was produced.

Learned counsel for the State has filed custody certificate



dated 29.05.2024, which is taken on record, as per which the petitioner has been in custody as an undertrial for a period of 01 years, 05 months and 03 days. Perusal of the custody certificate shows that no other case is pending against the petitioner. On instructions from ASI Satish Kumar, learned counsel for the State informs that out of total 25 prosecution witnesses, 12 have already been examined by the learned trial Court and the next date of hearing before the learned trial Court is 23.07.2024.

Having heard learned counsel for the parties, but without commenting on merits of the case, however, keeping in view the totality of the peculiar facts and circumstances of the case; including the custody period of 01 year, 05 months and 03 days undergone by the petitioner as an undertrial, and perusal of the custody certificate reveals that there is no other case against the petitioner; and also the fact that conclusion of trial will take considerable time; and no useful purpose would be served by further detention of the petitioner. Thus, the present petition is **allowed**.

The petitioner-Khalil @ Khaleel S/o Mukhtyar Singh, is ordered to be released on regular bail on his furnishing bail/surety bonds to the satisfaction of the trial Court/Chief Judicial Magistrate/Duty Magistrate, concerned.

However, it is made clear that nothing stated above shall be construed as an expression of opinion on the merits of the case.

31.05.2024
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(NIDHI GUPTA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No