

CRM-M-27003-2024

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2024:PHHC:077945



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

206

CRM-M-27003-2024

Date of Decision: 30.05.2024

Manish

.... Petitioner

Versus

State of Haryana

.... Respondent

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present: - Mr. Bhisham Kumar Majoka, Advocate for the petitioner.

Mr. Surinder Kumar Dagar, DAG, Haryana.

NIDHI GUPTA, J. (ORAL)

The petitioner has filed the present 1st petition under Section 439 of the Code of Criminal Procedure, 1973, for grant of regular bail in case FIR No. 122 dated 01.04.2023 (Annexure P-1) registered under Sections 363 and 366 IPC and Sections 6/17 of the Protection of Children from Sexual Offences Act, 2012 at Police Station Sadar Ballabgarh, Faridabad, District Faridabad.

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

“To the SHO Sahib, Police Station Sadar Ballabgarh, it is requested that I am BIMAL W/O PRHALAD, resident of village Fatehpur Billoch. On 29/3/23 my daughter xxxx go with the Manish. Manish has taken away. Whose whereabouts are still unknown. If something happens to xxxx. So, Manish and his family members will be



responsible. Searches for my daughter xxxx. Which till now I have been searching my girl xxxx as my own. The features of my daughter xxxx are as follows: fair complexion, round face, 5 feet and 18 years old. The clothes that Plaza is wearing. If both of them are called Manish and xxxx. So, marry them.....”

Learned counsel for the petitioner, *inter alia*, submits that the allegations levelled in the FIR are false and fabricated, as the victim in her statement dated 01.04.2023 (Annexure P-2) recorded under Section 161 Cr.P.C., had categorically stated that on the date of incident i.e. 29.03.2023, she had gone to Kalka Temple with her friends at around 5:30 in the evening without informing her mother/complainant herein and after that they stayed in the temple for a night and nothing wrong has happened to her. Thereafter, her mother had made a missing complaint behind the back of the victim and when she returned to home on 01.04.2023, she was produced before the police by her mother on the same day and her statement was also recorded on the said date.

Learned counsel submits that it is only after 04 days thereafter i.e. on 05.04.2023 that the statement of the victim under Section 164 Cr.P.C. was recorded, wherein allegations of rape surfaced against the petitioner. It is stated that DNA report is negative as semen could not be detected on the exhibits of vaginal swabs submitted by the victim. The petitioner has been in custody since 06.04.2023. Thus, it is prayed that the petitioner be released on regular bail.

Per Contra, learned counsel for the State counters the aforesaid submission of learned counsel for the petitioner and submits that at the time of occurrence, the victim was minor being 17 years, 07



months and 09 days old. The date of alleged incident is 29.03.2023, thereafter, the victim was produced before the police by her mother/complainant herein on 01.04.2023 and her statement under Section 161 Cr.P.C. was also recorded on the same day. Medico-legal examination of the victim was conducted on 05.04.2023. The victim in her statement dated 05.04.2023 recorded under Section 164 Cr.P.C., had levelled specific allegations against the petitioner. The victim in her testimony as PW-1 before the learned trial Court has also supported the case of the prosecution.

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 year, 01 month and 24 days. Perusal of the custody certificate shows that no other case is pending against the petitioner. On instructions from ASI Veerpal, learned counsel for the State informs that out of total 17 prosecution witnesses, only 01 i.e. the victim has been examined, so far.

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, 01 month and 24 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 out of total 17 prosecution witnesses, only 01 witness has been examined so far, therefore, 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-Manish S/o Gopal, 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.

Pending application(s), if any, shall also stand disposed of.

30.05.2024
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(NIDHI GUPTA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No