



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
203

CRM-M-29666-2024
Date of Decision: 05.09.2024

Deva Nand @ Deva

Versus

....Petitioner

State of Punjab

.... Respondent

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present: - Mr. Manuj Nagrath, Advocate for the petitioner.

Ms. Aakanksha Gupta, A.A.G., Punjab.

NIDHI GUPTA, J. (ORAL)

The petitioner has filed the present 1st petition under Section 439 Cr.P.C, for grant of regular bail in case FIR No. 148 dated 26.07.2023 registered under Sections 363, 366-A, 506, 120-B IPC, 1860 (Sections 376 IPC and 3 and 4 POCSO Act added later on) at Police Station Samrala, District Khanna (Annexure P-1).

Short reply filed by way of an affidavit of the Deputy Superintendent of Police, Samrala, Police District Khanna, District Ludhiana on behalf of respondent i.e. State of Punjab in Court today is taken on record. A copy thereof has been handed over to learned counsel for the petitioner.

Learned counsel for the petitioner *inter alia* submits that the present FIR was registered on the basis of the statement of the grandfather of the alleged victim; wherein it has been alleged that the victim had been enticed away by the petitioner on 24.07.2023. Learned



counsel points out that thus, as per the FIR (Annexure P-1) no allegations under Sections 376 IPC and 3 and 4 of the POCSO Act have been made; and the allegations are only in respect of offences under Sections 363, 366-A, 506, 120-B IPC.

Learned counsel further submits that in the final report under Section 173 Cr.P.C. (Annexure P-2), it has been recorded that upon recovery of the victim, her parents did not come to take her custody and as such she was sent to the Child Welfare Society, Shimlapuri, Ludhiana. Learned counsel also refers to zimni order dated 31.07.2023 passed by learned Sub Divisional Judicial Magistrate, Samrala, wherein also this fact has been recorded that *‘no one from her family has come to take her custody.’*

Learned counsel for the petitioner, while referring para 5 of the short reply dated 25.07.2024, further submits that as per the statement of the victim made under Section 164 Cr.P.C. recorded on 31.07.2023, she has stated that she had accompanied the petitioner voluntarily and that she knew the petitioner from 1 year. Learned counsel then refers to the testimony of the victim as PW2 (Annexure P-4) wherein she has stated that she was enticed away by the petitioner. However, in her cross-examination, the victim has categorically stated that her parents were forcing her to marry with an old aged person, as a result of which she had voluntarily accompanied the petitioner. Learned counsel further submits that the petitioner has been in custody since 29.07.2023 as undertrial. No useful purpose will be served by further detention of the petitioner in custody. Thus, it is prayed that the present petition may be



allowed and the petitioner be released on regular bail.

Learned counsel for the State opposes prayer made on behalf of the petitioner and, on instructions from ASI Jarnail Singh, submits that the victim in the present case is only 14 years of age and as such any consent on her part is irrelevant. It is further pointed out that FSL report as well as DNA report are positive. The victim went missing on 24.07.2023 and was recovered thereafter on the basis of a secret information received on 29.07.2023 from the custody of the petitioner. It is submitted that the victim as well as the complainant in their testimonies as PW1 and PW2 respectively have supported the prosecution case in their examination-in-chief; however in their Cross-Examination which is recorded a month thereafter, both witnesses have turned hostile. Learned counsel for the State, on instructions, submits that the victim is currently residing with her grandfather/complainant. Learned counsel for the State further submits that out of total 13 witnesses, 7 witnesses have been examined; and the next date before the learned trial Court is 11.09.2024.

Learned counsel for the State files custody certificate dated 04.09.2024, which is taken on record, as per which the petitioner has been in custody as an undertrial for a period of 1 year, 1 month and 6 days. There is one more case pending against the petitioner i.e. FIR No. 49 dated 21.04.202 registered under Sections 447-511-380-148-,149 IPC at Police Station Anaj Mandi, wherein the petitioner is on bail vide order dated 17.05.2022 passed by learned Judicial Magistrate 1st Class, Patiala.

Having heard learned counsel for the parties, but without commenting on merits of the case, however, keeping in view the totality



of the facts and circumstances of the case including: a) the custody period of 1 year, 1 month and 6 days undergone by the petitioner as an undertrial; b) material witnesses already stand examined; and d) out of total 13 witnesses, 7 witnesses have been examined and, therefore, the 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-Deva Nand @ Deva S/o Anoj Paswan, 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.

05.09.2024
Divyanshi

(NIDHI GUPTA)
JUDGE

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