



CRM-M-31213-2023 (O&M) 1

209 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-31213-2023 (O&M)
Date of Decision: 20.09.2024

SHILPI @ SHILPI KUMARI

.....PETITIONER

Vs.

STATE OF HARYANA

.....RESPONDENT

CORAM: HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN

Present:- Mr. Rakesh Dhiman, Advocate, for
Mr. Sudhir Rana, Advocate, for the petitioner.

Mr. Kirpal Singh Thakur, A.A.G., Haryana.

HARPREET KAUR JEEWAN J. (ORAL)

1. The present petition has been filed under Section 439 Cr.P.C. for grant of regular bail to the petitioner in case bearing FIR No. 78, dated 27.02.2022 under Sections 328, 363, 366 and 506 of the IPC and Section 4(1), 6, 14 and 17 of the Protection of Children from Sexual Offences, Act, 2012 (for short '*the POCSO Act*'), registered at Police Station Dharuhera, District Rewari.

2. Custody certificate, dated 18.09.2024 of the petitioner showing actual undergone period of 02 years, 03 months and 19 days, has been filed in Court today by learned State Counsel. The same is taken on record.

3. As per the prosecution case, on 27.02.2022 the matter was reported to the police by the complainant regarding missing of his two daughters, i.e. victim, "U", aged about 15 years, and victim "K" aged about 14 years. On 26.02.2022, both the victims had gone out of the house for picking up stitched clothes but they did not return back. On 03.03.2022, the

**CRM-M-31213-2023 (O&M)** 2

victim “U” was produced in the police station by her father and her statement was recorded on 04.03.2022 under the provisions of Section 164 Cr.P.C., wherein she disclosed that she went along with the victim “K”. She further disclosed that she came back home from Village Chandola, Police Station Attorli, District Aligarh. The victim refused for her medical-examination and thereafter, she was handed over by the police to her parents.

3.1 It is further the case of the prosecution that on 03.05.2022, the present petitioner-Shilpi was joined in the investigation and she admitted her involvement in the crime. Upon the information given by the petitioner, the call details of co-accused Saurav were obtained. From the call details of victim “K” and co-accused Saurav; victim “K” was found to be staying in Village Sakarva, District Aligarh (Uttar Pradesh).

3.2 As per the status report filed on behalf of the State, dated 18.08.2023, both, the victim “K” and co-accused Saurav were recovered from the said place in Uttar Pradesh. On 28.05.2022, the statement of the victim “K” was recorded under the provisions of Section 164 Cr.P.C. wherein she deposed that she was in love with Saurav but the parents of the victim refused for solemnizing her marriage with the co-accused Saurav. Upon which on 27.02.2022 the victim went along with the petitioner-Shilpi at Aligarh, Uttar Pradesh, where she stayed about 1-2 months at the room of co-accused Rohit @ Munvar Khan, who did wrong act with her and the present petitioner took money from the co-accused Rohit. The victim “K” called Saurav and informed that co-accused Rohit had prepared her objectionable videos and thereafter, the victim “K” and co-accused Saurav went away to Ujjain (M.P.) and they solemnized marriage in a temple.

**CRM-M-31213-2023 (O&M)**

3

3.3 As per the prosecution version, the date of birth of the prosecutrix-victim “K” is 01.03.2010 and she was 12 years of age at the time of the alleged occurrence. The medical examination of the victim “K” was conducted on 28.05.2022, her “LMP was Normal Study” and her urine examination also showed “Bile Pigment Negative”. Thereafter, on 06.06.2022 the victim “K” was handed over to her parents.

3.4 The allegations against the petitioner are that the petitioner was earlier residing in the neighbourhood and she was aware that victim “K” is minor but due to her active connivance, co-accused Rohit @ Munwar Khan had committed penetrative sexual assault upon the victim “K” and also made a videograph which was shared through ‘Whatsapp’ *inter se* the present petitioner and the co-accused Rohit @ Munwar. As per the prosecution version, even as per the RFSL report, dated 07.06.2022, “blood was detected on the exhibits, i.e. LA (vaginal slides), 1-B (vaginal swab), 1-C (cervical slides) and 1-D (Cervical swab)”. However, human semen could not be detected on the aforesaid exhibits.

3.5 It is further in allegation that as per the DITAC report, dated 22.06.2022, a video clip of 50 seconds was found where the victim was lying in unconscious state and she was being subjected to Penetrative Sexual Assault and the act is being video-graphed by co-accused Munwar Khan. The mobile phone make Oppo and Realme were recovered from the petitioner and from co-accused Rohit @ Munwar Khan were sent for examination to the DITAC Lab, Gurugram.

4. Learned counsel for the petitioner *inter alia* contends that statement of the prosecutrix (Annexure P-1) has already been recorded. She

**CRM-M-31213-2023 (O&M)**

4

has not levelled any allegations against the petitioner. He also submits that co-accused Saurav has already been granted the concession of regular bail by this Court, vide order dated 23.07.2024 passed in CRM-M-30519-2023. The petitioner is also entitled for bail on the ground of parity.

5. Learned counsel for the State has opposed the present petition, on the ground of gravity of allegations against the petitioner and also submits that the age of the prosecutrix was 12 years, as such the crime is heinous.

6. I have considered the aforesaid contentions

7. The victim 'K' when appeared as PW-6 was declared as hostile and the Public Prosecutor was allowed to cross-examine the victim. The victim has admitted that she was recovered from Mathura along with co-accused Saurav. She has disputed the date of birth recorded in the school as 01.03.2010 and voluntarily stated that her date of birth is 01.06.2005 and stated that the said date of birth is mentioned in her Aadhar card. As per the cross-examination conducted on 19.05.2023 (Annexure P-1), the images and obscene video retrieved from DITAC report contained in a pen drive Ex. MO-1 was shown to the victim by playing the same on the Court's computer. It was stated that she was not seen in the said video and also did not identify the person (s) showing in the said video. A suggestion was put to her, however, she denied that in the obscene video co-accused Munwar Khan @ Rohit and the victim were seen. She also denied that the said video was made by the petitioner and the co-accused Rohit.

8. It would be debatable if the petitioner had abetted the commission of Penetrative Sexual Assault by co-accused Munwar Khan @ Rohit by aiding her since the victim has denied to identify the co-accused



CRM-M-31213-2023 (O&M) 5

Munwar Khan @ Rohit in her statement recorded in the Court. She has also denied to undergo DNA examination and for giving blood samples for the said purpose, vide her affidavit, as well as the affidavit of her father Sudershan Dass [(Annexure R-2 (colly.)) appended with the status report, dated 09.08.2024. The determination of age of the victim ‘K’ is also a matter of trial.

9. As per the custody certificate, the petitioner has undergone about 02 years, 03 months and 19 days of actual custody. The petitioner is a female and stated to be carrying her 3½ old child in custody.

10. Learned counsel for the petitioner, at this stage, has informed that the said 3½ old child is staying in jail since the time of arrest of the petitioner.

11. The petitioner is not involved in any other criminal case, as per the custody certificate. The conclusion of the trial will take time. Despite the custody period of more than 02 years and 03 months, out of total 38 PWs, only 08 PWs have been examined.

12. Keeping in view the above, without making any comment on the actual merits of the case, the petition is allowed. The petitioner is ordered to be released on regular bail, subject to her furnishing adequate bonds and surety bonds to the satisfaction of the trial Court/Duty Magistrate concerned. However, it is made again clear that nothing expressed hereinabove would be construed to be an expression of opinion on merits of the case.

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

September 20, 2024	(HARPREET KAUR JEEWAN)
nitin	JUDGE
Whether Speaking	Yes/No
Whether reportable	Yes/No