

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

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CRM-M No.31858 of 2023
Date of decision: 06.02.2024

Sawan alias Sawant

... Petitioner

Vs.

State of Haryana

... Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Vikas Bishnoi, Advocate,
for the petitioner.

Mr. Neeraj Poswal, AAG, Haryana.

MANISHA BATRA, J.

1. The present petition has been filed by the petitioner seeking regular bail under Section 439 of Cr.P.C. in FIR No.364 dated 28.04.2022 registered under Sections 363 and 366-A of IPC (during investigation, Section 376 (2) (n) of IPC and Section 6 of Protection of Children from Sexual Offences Act, 2012 (For short “POCSO Act”) were added) at Police Station Azad Nagar, Hisar District Hisar.
2. Brief facts of the case relevant for the purpose of disposal of this petition are that the aforementioned FIR was registered on the basis of complaint lodged by the complainant (name withheld) on 28.04.2022 alleging therein that on the same day his wife and victim who was his minor daughter aged 16 years had gone to fields for grazing their goats where his daughter had gone missing. He further stated that while he was searching for his daughter, then one boy who disclosed his name as

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Sumit came to their house and told him that his daughter was in their house. The complainant went to the house of the said Sumit but his younger brother Shiva was found there but stated that the victim had left their house. He raised suspicion that the above named Shiva and Sumit had a hand in kidnapping of his daughter. Initially, a case under Section 363 and 366-A of IPC was registered. Investigation proceedings were initiated. During investigation, the parents of the victim produced her before the police on 09.05.2022. Her statement was recorded and she disclosed that the petitioner Sumit @ Sawan used to come in the street of her house for the purpose of picking rag. They had started making conversation with each other from the last 3-4 months. He had given his mobile phone number to her. She alleged that on the night of 27.04.2022, the petitioner had come outside to her house and called her and thereafter, by enticing her, he had taken her away to Haridwar in a train. They had stayed there in some slum area for 14-15 days. The petitioner had repeatedly committed rape upon her during that period and thereafter they had come back. On the basis of her statement, offences under Section 376 (2) (n) of IPC and Section 6 of POCSO Act were added. The victim was medically examined. Her pregnancy test was also conducted. The record regarding to her date of birth was obtained according to which, she was a minor. The petitioner was arrested on 10.05.2022. On interrogation, he suffered disclosure statement and demarcated the place of occurrence and admitted his involvement in the act of enticing the victim away and ravishing her. His medical examination was also

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conducted. 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 aforementioned offences.

3. 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. He is in custody since 10.05.2022. Infact the prosecutrix and himself were in love with each other and this fact had come to the knowledge of their parents. Her statement had since been recorded which proved the factum of their being in love with each other. The trial was likely to take time. There were no chances of his intimidating the victim as she had already been examined. No useful purpose was going to be served by his further detention. Therefore, he has argued that the petition deserves to be allowed.

4. Per contra, learned State counsel has resisted the petition in terms of the status report. It is submitted therein and it has been argued by him that there are serious and specific allegations against the petitioner. He had enticed away the victim who was a minor girl of 16 years of age out of guardianship of her parents without their permission and by inducing her on the pretext of performing marriage with her and had repeatedly committed rape upon her. The DNA report was still awaited. Therefore, it is urged that the petition does not deserve to be allowed.

5. I have heard learned counsel for the petitioner and learned

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State counsel and have gone through the record.

6. The petitioner is alleged to have kidnapped the minor victim and taken her away out of lawful guardianship of her parents without their consent, permission and knowledge, is further alleged to have taken her to different places and the allegations also reveal that he had subjected her to aggravated penetrative sexual assault. There are specific allegations against the petitioner. In her statement recorded under Section 164 of Cr.P.C. as well as in her sworn deposition, the victim has supported the version of the prosecution. Even if for the sake of arguments, it is assumed that it was a case of consent, still, the same has no value, since the victim was a minor at the time of the incident. There is nothing on record to show that there would be any undue delay in conclusion of the trial. Taking into consideration the grave nature of the offences stated to have been committed by the petitioner, the quantum of sentence which the conviction will entail and the attendant facts and circumstances of the case, but without meaning to make any comment on the merits of the case, I am of the considered opinion that the petition does not deserve to be allowed. Hence, the same is dismissed.

06.02.2024
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(MANISHA BATRA)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No