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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

286

**CRM-M No.32166 of 2024
Date of Decision: 08.08.2024**

Yadwinder Singh

... Petitioner

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Sumeet Puri, Advocate,
for the petitioner (Through Video Conferencing).

Mr. Amandeep Singh Samra, AAG, Punjab,
for the respondent-State.

MANISHA BATRA, J. (Oral)

1. The present one is the second petition for grant of regular bail as filed by the petitioner in case arising out of FIR No.95 dated 12.06.2023 registered under Sections 363, 366-A, 376, 376-D read with Section 120-B of IPC and Section 4 of Protection of Children from Sexual Offences Act, 2012 (For short "POCSO Act") at Police Station Bhawanigarh, District Sangrur. His previous bail petition had been dismissed vide order dated 21.03.2024.
2. The petitioner is facing trial for commission of offences punishable under Sections 363, 366-A, 376, 376-D read with Section 120-B of IPC and Section 4 of POCSO Act. The allegations against him

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are that he along with co-accused Kuldeep Singh @ Tinda had kidnapped the minor prosecutrix out of custody of her lawful guardianship and had subjected her to rape/aggravated penetrative sexual assault.

3. The previous bail application as filed by the petitioner had been dismissed by observing that though the prosecutrix had not named the petitioner as one of the persons who had subjected her to rape but his complicity in the said crime in pursuance of a conspiracy hatched with the co-accused could not be ruled out and by further observing that he along with the co-accused had kidnapped the prosecutrix out of her lawful guardianship.

4. It is argued by learned counsel for the petitioner that after the dismissal of the first petition for grant of bail as filed by the petitioner, circumstances have changed as the prosecutrix has since been examined and there are stark contradictions in the statements recorded by her during investigation and before the trial Court and they do not suggest the involvement of the petitioner in committing the offence of rape upon the prosecutrix. By further submitting that the petitioner is in custody for over a period of one year, it is urged that he deserves to be extended benefit of bail.

5. Status report has been filed by the respondent-State. Copy of sworn deposition of the prosecutrix has also been annexed with this report. It is argued by learned State counsel that keeping in view the gravity of the allegations against the petitioner, he does not deserve to be extended benefit of bail.

6. I have heard learned counsel for the petitioner as well as learned

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State counsel and have gone through the record.

7. As per the allegations, on 05.06.2023, the co-accused Kuldeep Singh @ Tinda had asked the prosecutrix to come and meet him and otherwise to face serious consequences and when she had gone to meet him, he along with the present petitioner had taken her on a motorbike towards the motor shed. Then on the same night, the co-accused had taken her to the house of her brother-in-law and had committed rape upon her. The prosecutrix had been examined on 05.02.2024. A perusal of her testimony reveals that though she stated that it was the petitioner and the co-accused Kuldeep Singh who had taken her on a motorcycle to the fields but she did not make any allegation with regard to committing offence of rape/penetrative sexual assault upon her against the petitioner and such allegation has been levelled by her as against the co-accused Kuldeep Singh when he had taken her his brother's-in-law house. It has also not been stated by her that the present petitioner was accompanying the co-accused and her at that time. Even in her statement recorded under Section 164 of Cr.P.C. she had not deposed so. As such, it appears that though the allegations qua complicity of the present petitioner in the commission of act of kidnapping the prosecutrix are there but no allegation qua his involvement in committing rape upon the prosecutrix has been levelled against him nor it has come out from her testimony that the present petitioner had hatched any conspiracy for facilitating the acts of penetrative sexual assault by the co-accused upon the prosecutrix. The petitioner is in custody for over a period of one year. The trial is likely to take time. Keeping in view the period of

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incarceration of the petitioner, the nature of the evidence which has come on record against him in the form of testimony of the prosecutrix and as per the discussion as made above but without meaning to make any comment on the merits of the case, I am of the considered opinion that the petitioner deserves to be released on bail at this stage. Hence, the petition is allowed and the petitioner is ordered to be admitted to bail subject to his furnishing personal as well as surety bonds to the satisfaction of learned trial Court.

08.08.2024
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(MANISHA BATRA)
JUDGE

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