



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
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CRM-M-32626-2024
Date of Decision: 17.07.2024

Jatinder Kumar

.... Petitioner

Versus

State of Punjab

.... Respondent

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present: - Mr. Ranjeet Singh Chauhan, Advocate for
 Mr. Balkaran Singh Aulakh, Advocate
 for the petitioner.

Ms. Rishu Madan, A.A.G., Punjab.

NIDHI GUPTA, J. (ORAL)

The petitioner has filed the present 2nd petition under Section 439 of the Code of Criminal Procedure, 1973, for grant of regular bail in case FIR No. 36 dated 16.02.2022 (Annexure P-1) registered under Sections 363, 366-A, 376 (added later on) of IPC and Section 6 of POCSO Act (added later on) at Police Station City Muktsar, District Sri Muktsar Sahib.

Learned counsel for the petitioner *inter alia* submits that in the present case, FIR was registered on the basis of statement of the father of the victim, which reads as under:-

“Statement of Kewal Krishan son of Ram Dular Resident of Bhullar Colony Street No. 05 Sri Muktsar Sahib Umar about 38 years Mobile No. 75894-14473 stated that I live in the said address. I work as stone cutter. I have two daughters. The elder daughter's name is Priyanka, whose age is about 16 years, and who studies in class 11 at Government Girls Senior Secondary School, Bathinda Road, Sri Muktsar Sahib, and my younger daughter's name is Roli whose age is



08 years, who lives with my parents in village Saholi Jagdishpur Police Station Barda District Ajamgarh UP and my parents take care of the younger daughter Roli and in my house Jitinder Kumar son of Pramod Das resident of Uren Police Station Kajra District Lakhisarai Surajgarh Bihar was living on rent since 08 years and used to do stone laying work with me and used to talk to my family members and on 14/02/2022 when I along with my wife went out for household work and my daughter Priyanka and Jitinder Kumar were present at home. When we came home, my daughter Priyanka and Jitinder Kumar were not present at home. I have full confidence that Jatinder Kumar has enticed away my daughter Priyanka on the pretext of marriage and while going Jatinder Kumar has taken my daughter Priyanka's documents and belongings along with him. I have been searching for my daughter Priyanka on my own, but we have not found her, so today I along with Saurav Rai were coming to the police station to give information. You have met us. Legal action should be taken against Jatinder Kumar.”

Learned counsel for the petitioner *inter alia* submits that in actual fact, the petitioner and the prosecutrix were in a consensual relationship. It is submitted that initially FIR under Sections 363 and 366-A IPC was registered against the petitioner. However, subsequently upon recording of the statement of the victim under Section 161 Cr.P.C. on 05.03.2022, offence under Section 376 IPC was also added to the present FIR. It is stated that as per the FIR, the date of alleged incident is 14.02.2022. However, FIR has been registered two days thereafter on 16.02.2022 and no explanation has been given for this delay. Furthermore, there is no medical evidence to implicate the petitioner as the FSL in the present case is negative since no human semen was found on the exhibits of the victim. Statement under Section 164 Cr.P.C. of the victim is also not on record. It is stated that moreover the petitioner has been in custody since 05.03.2022 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 submits that as per the MLR conducted on 05.03.2022, the victim was found to be pregnant and fetus was aborted on 09.03.2022. It is stated that the victim in her statement under Section 161 Cr.P.C. as also in her testimony as PW2 has supported the prosecution case. Learned counsel for the State files custody certificate dated 15.07.2024, which is taken on record, as per which the petitioner has been in custody as an undertrial for a period of 2 years, 4 months and 8 days. Learned counsel, on instructions, informs that out of 25 witnesses, 7 witnesses have 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 facts and circumstances of the case including: a) the custody period of 2 years, 4 months and 8 days undergone by the petitioner as an undertrial; b) no other case pending against the petitioner as evident from the custody certificate placed on record; c) as also the fact that material witnesses i.e. the victim and complainant stand examined; d) and out of 25 witnesses 7 witnesses have been examined so far 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-Jatinder Kumar S/o Parmod Dass, 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.

17.07.2024

Divyanshi

(NIDHI GUPTA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No