

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CRM-M-36107-2023 (O&M)

Date of order: 16.02.2024

Desh Raj

.....Petitioner(s)

Vs.

State of Haryana

.....Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Vikram Jeet Singh, Advocate
for the petitioner.

Mr. S.K. Daggar, DAG Haryana.

Nidhi Gupta, J.

Present is the first petition under Section 439 Cr.P.C. for grant of regular bail in case FIR No.516 dated 19.12.2022 under Sections 363, 366, 452, 376(3), 376(2)(n) IPC and Section 6 of POCSO Act registered at Police Station Sadar Pehowa, District Kurukshetra.

2. FIR in the present case was registered on the basis of statement of father of the victim and the same reads as under:-

"....Yesterday, on 18.12.2022 at about 3, my daughter Kirna daughter of Shishpal has gone somewhere without telling anything. When we found her, then we came to know that a boy namely Jassu son of Toni, caste Balmiki, resident of Bhatmajra has taken away her by alluring. The age of the girl is 14 years, complexion fair, height 5 feet 2 inch, slim and tall. It is requested to your goodself that my daughter be searched....".

3. Learned counsel for the petitioner inter alia submits that the victim in her statement under Section 164 Cr.P.C. dated 20.12.2022

(Annexure P1) has categorically stated that in the afternoon of 18.12.2022 at about 3:00 PM, she went with the petitioner of her own free will. It is further contended that there is no allegation of rape made against the petitioner in the statement under Section 164 Cr.P.C.

4. Ld. Counsel further submits that though the FSL report dated 03.01.2023 (Annexure P3) is positive, however, DNA is not matching. Moreover, the petitioner has been in custody for over one year. As the prosecution witnesses including the complainant and the victim have been examined therefore, no useful purpose would be served by keeping the petitioner behind bars.

5. Learned State Counsel files custody certificate dated 14.02.2024 and DNA report dated 27.09.2023, which are taken on record. As per the custody certificate, the petitioner has been behind bars for 1 year 1 month and 24 days.

6. Learned State Counsel vehemently opposes the prayer for grant of regular bail to the petitioner and submits that at the time of incident, the victim was only 13-and-a-half-year-old. It is submitted that serious allegations have been made in the FIR; and the victim in her testimony as PW5 (Annexure R3), and the complainant in his testimony have supported the prosecution case. However, learned counsel admits that the DNA report is negative.

7. No other argument is made on behalf of the parties.

8. I have heard learned counsel for the parties.

9. Without commenting on the merits of the matter, however, keeping in view the totality of the facts and circumstances of the

case, including the fact that the petitioner has been in custody for 1 year 1 month and 24 days; and the fact that perusal of custody certificate shows that no other case is pending against the petitioner; admittedly, all the prosecution witnesses including the material witnesses that is the complainant and the victim, have been examined; and no useful purpose would be served by keeping the petitioner behind bars; present petition is **allowed**. The petitioner namely Desh Raj s/o Balwinder Singh is released on regular bail subject to furnishing of his bail bonds/surety bonds, to the satisfaction of the Duty Magistrate/Illaqa Magistrate concerned.

10. Pending application(s) if any also stand(s) disposed of.

16.02.2024
Sunena

(Nidhi Gupta)
Judge

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No