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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-34529-2024 (O&M)

Date of Decision: 25.07.2024

SHIVAM GAUTAM

.. Petitioner

Vs.

STATE OF HARYANA AND ANOTHER

..Respondents

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Dushyant Rana, Advocate for the petitioner.

Ms. Priyanka Sadar, AAG, Haryana.

Ms. Ananya Ahluwalia, Advocate for respondent No.2.

...

SUMEET GOEL, J. (Oral)

1. Present petition has been filed under Section 483 BNSS for grant of regular bail to the petitioner in case bearing FIR No.62 dated 18.11.2023, registered for the offences punishable under Section 376(2)(n) of IPC and Sections 2 & 5 of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 (Sections 6 and 12 of POCSO Act deleted later on) at Police Station Women Police Station, Naraingarh, Ambala.

2. The case set up in the FIR in question (as set out by the petitioner in the present petition) is as follows:-

“The copy of the application is as follows Statement of Priya Kaur daughter of Shri Babu Ram resident of Gotha Khandwa Police Station Aavla Tehsil Bareilly Uttar Pradesh presently residing at Durga Colony Kala Amb District Ambala aged about 16 years 3 months studying in 7th class, It is stated that I am the resident of above mentioned address and resides at home only. We are three brothers and sisters. My parents work in a company. For the last 2-3 months, I used to talk to a



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boy named ShivamGautam on instagram, who lives in the house opposite of ours on rent. We became friends with each other but Shivam used to threat me and he used to ask me to go with him, due to the fear of my parents, as per his request, he took me with him to Hotel ShahiDarbar, there Shivam threatened me, forced me and raped me several times, which happened yesterday on 17.11.2023 also, he took me with him to ShahiDarbar Hotel near Markanda bridge, Kala Amb at night and forcibly raped me there and left me in the street of our colony at around 11.30 in the day, when my family members came there. When I left, I told my ordeal to my parents. Strictest legal action should be taken against Shivam Gautam. Because after we met, both our families gathered and Shivam Gautam said that he will not marry a girl from Jatav caste because he knew earlier that Jatavs belong to Scheduled Caste and Chamar caste. Got the statement written, heard it. I, Babu Ram, son of Shri Bhagwan Das, have written this statement in front of my daughter Priya and it is okay. SD-PRIYA KAUR 18.11.2023 DEEPTI BENGANI LEGAL COUNSEL NARAINGARH DT 18.11.2023.”

3. Learned counsel for the petitioner has argued that the petitioner is in custody since 20.11.2023. Learned counsel for the petitioner has further argued that the prime prosecution witnesses, namely, victim/complainant as also mother of the victim have turned hostile & hence in all likelihood the trial is not likely to culminate into conviction. Thus, the regular bail is prayed for.

4. Learned State counsel has opposed the present petition arguing that the allegations raised are serious in nature and thus the petitioner does not deserve the concession of the regular bail.

5. I have heard counsel for the parties and have gone through the available records of the case.

6. The petitioner was arrested on 20.11.2023 whereinafter investigation was carried out & challan was presented on 19.01.2024. Total 15 prosecution witnesses have been cited out of which 3 stand examined and culmination of the trial but of course take its own time. It is not in

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dispute that the prime private prosecution witnesses, namely, the victim/complainant as also mother of the victim, when examined as PW1 and PW2 respectively have not supported the prosecution version. The rival contention of the learned counsel for the parties; regarding the weightage required to be attached to the testimonies of the hostile prime prosecution witnesses; shall be gone into during the course of trial. This Court does not deem it appropriate to delve deep into these rival contentions, at this stage, lest it may prejudice the trial. Nothing tangible has been brought forward to indicate the likelihood of the petitioner absconding from the process of justice or interfering with the remaining prosecution evidence. As per the custody certificate dated 24.07.2024 filed by the learned State counsel, the petitioner has suffered incarceration for more than 08 months and 05 days & is not shown to be involved in any other case. Suffice to say further detention of the petitioner as an undertrial is not warranted in the facts and circumstances of the present case.

7. In view of totality of factual matrix of the present case, the instant petition is allowed. Petitioner is ordered to be released on regular bail on his furnishing bail/surety bonds to the satisfaction of the Ld. concerned CJM/Duty Magistrate. However, in addition to conditions that may be imposed by the concerned CJM/Duty Magistrate, the petitioner shall remain bound by the following conditions:-

- (i) The petitioner shall not mis-use the liberty granted.
- (ii) The petitioner shall not tamper with any evidence, oral or documentary, during the trial.
- (iii) The petitioner shall not absent himself on any date before the trial.

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- (iv) The petitioner shall not commit any offence while on bail.
- (v) The petitioner shall deposit his passport, if any, with the trial Court.
- (vi) The petitioner shall give his cellphone number to the Investigating Officer/SHO of concerned Police Station and shall not change his cell-phone number without prior permission of the trial Court/Illaqa Magistrate.
- (vii) The petitioner shall not in any manner try to delay the trial.

8. In case of breach of any of the aforesaid conditions and those which may be imposed by concerned CJM/Duty Magistrate as directed hereinabove or upon showing any other sufficient cause, the State/complainant shall be at liberty to move cancellation of bail of the petitioner.
9. Ordered accordingly.
10. Nothing said hereinabove shall be construed as an expression of opinion on the merits of the case.
11. Since the main case has been decided, pending miscellaneous application, if any, shall also stands disposed off.

25.07.2024

Jasmine Kaur

(SUMEET GOEL)

JUDGE

Whether speaking/reasoned

Yes No

Whether reportable

Yes No