

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CRM-M No.37539 of 2022
Date of Decision: 27.02.2024

Durgesh @ Sonu ... Petitioner

Versus

State of Haryana ... Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Amit Choudhary, Advocate,
for the petitioner.

Mr. Arjun Lakhanpal, Addl. AG, Haryana.

MANISHA BATRA, J.

1. The present petition has been filed under Section 439 of Cr.P.C. seeking regular bail in FIR mentioned below:-

FIR No.	Dated	Police Station	Sections
71	10.02.2021	Barwala, District Hisar	120-B, 328, 342, 354-A, 354-C, 365, 376-D and 384 of IPC and 6 of Protection of Children from Sexual Offences Act, 2012

2. Brief facts of the case relevant for the purpose of disposal of this petition are that the aforementioned FIR was lodged on the basis of complaint lodged by the complainant “K” (name withheld) on 10.02.2021 alleging therein that the victim “P” (name withheld) who is his 17 year old daughter studying in a private school in the village was a kabaddi player and used to play kabaddi in the village. The petitioner used to harass and tease her daughter. He alleged that when his daughter used to

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play kabaddi, she along with other girls used to change her clothing in the fields and during that time, the petitioner had clicked her photographs while changing clothings and on the basis of the same, he started blackmailing her by showing those photographs. He alleged that in the morning of 09.02.2021, the petitioner took his daughter away on his motorcycle after exerting pressure upon her. She was taken to some fields wherein the petitioner had called 3-4 of his friends. The victim was given some intoxicating substance mixed in tea by the petitioner and his friends and thereafter wrong act was committed with his daughter. He alleged that while making search for his daughter, he had come to know about her whereabouts and along with the police had gone to the place of occurrence and had got his daughter released from the clutches of the petitioner and his friends. After registration of FIR, investigation proceedings were initiated. The petitioner and the co-accused, two of them were declared juveniles in conflict with law were also apprehended. The victim was medically examined. Her statement under Section 164 of Cr.P.C. was also recorded. After completion of investigation, challan was presented against the present petitioner and the co-accused and presently, they are facing trial for commission of the aforementioned offences. The petitioner moved two applications for grant of bail before the learned trial Court which were dismissed.

3. The present petition has been filed by the petitioner on the grounds and it is argued by his counsel that he has been falsely implicated in this case. The version of the prosecution is improbable and unnatural. The prosecutrix improved her version in her statement recorded under Section

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164 of Cr.P.C. as it was different than the version as given under Section 161 of Cr.P.C. Since she herself was a kabaddi player, therefore, it is not believable that she could be forced by the petitioner to be taken on his motorcycle on the fateful day. No injury was found on her person as per the medical report. Her version as to how many persons had ravished her was also different at two different places. The petitioner is in custody since 11.02.2021. The trial is still likely to take time as examination-in-chief of the victim only has been recorded so far and no other witness has been examined due to non-receipt of DNA report. With these broad submissions, it is argued that he deserves to be given concession of bail.

4. Per contra, learned State counsel has argued that there are serious and specific allegations against the petitioner of taking away the prosecutrix, wrongfully confining her, administering some intoxicating substance to her mixed in tea and then of committing gang rape upon her along with his friends. She was recovered from the custody of the petitioner as well as the co-accused on 09.02.2021. Human semen has been detected on the clothing of the victim. There is nothing on record to show that there would be any undue delay in conclusion of the trial. With these broad submissions, it is urged that the petition does not deserve to be allowed.

5. I have heard learned counsel both the parties and have gone through the record carefully.

6. The copy of statement of the victim as recorded under Section 161 of Cr.P.C. as well as her statement as recorded under Section 164 of Cr.P.C. have been placed on record as Annexures P-2 and P-3 respectively and on perusal of the same, no such material inconsistency can be shown to

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have occurred on the basis of which it could be stated that the victim had improved her version. There are specific allegations that the petitioner along with co-accused had ravished the victim by taking her away on 09.02.2021 and she was recovered from a room built in fields of some village wherein the petitioner along with friends was also present. Learned counsel for the petitioner has failed to point out any such circumstance on the basis of which it could be stated at this stage that the version as given by the prosecutrix is false. Mere non receipt of injuries on the person of the victim is not a ground to disbelieve her version. It is well settled proposition of law that the period of incarceration itself is not the criteria for extending benefit of a bail to a person especially accused of heinous crime. The allegations against the petitioner are serious in nature. Keeping in view the gravity of the same, the quantum of sentence which the conviction may entail and the entire facts and circumstances, I am of the considered opinion that the petition does not deserve to be allowed. Accordingly, the same is dismissed.

7. It is clarified that observations made hereinabove shall not be construed as an expression of opinion on the merits of the case.

27.02.2024
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(MANISHA BATRA)
JUDGE

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