

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
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CRM-M-34700-2024
Date of Decision: 17.09.2024

Khalid
Versus
....Petitioner

State of Haryana
.... Respondent

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present: - Mr. Abhimanyu Singh, Advocate for the petitioner.

Ms. Deepshikha Chauhan, A.A.G., Haryana.

Mr. Vasu Ranjan Shandilya, Advocate
for the complainant through V.C.

NIDHI GUPTA, J. (ORAL)

The petitioner has filed the present 1st petition under Section 439 Cr.P.C, for grant of regular bail in case FIR No. 16 dated 21.05.2023 registered under Sections 323, 363, 366 & 506 IPC, 1860 and Section 6 of the POCSO Act, 2012 at Police Station Women Police Station, Mewat, District Nuh (Haryana) (Annexure P-1).

Learned counsel for the petitioner *inter alia* submits that the present FIR (Annexure P-1) has been registered on the basis of the statement of the father of the victim and reads as follows:

*“To, Officer Incharge, Women Police Station Nuh
Subject: Regarding the application, regarding taking legal action against accused persons for committing rape upon Rukaiya, for impregnating her and threatening to kill upon disclosing and filing a case against 1. Khalid (Mobile No. 9813797798) son of Rasheed 2. Rasheed son of Ruddar*



resident of village Malb police station Sadar Nuh district Nuh for raping the minor daughter of the applicant, making her pregnant, and threatening to kill her if she tells anyone. Sir, the applicant makes the following request that- 1. That the applicant Israel son of Nasrudin is a resident of village Malb police station Sadar Nuh district Nuh and I am a law abiding handicapped person, 2. That there is a distance of three to four Kila between the residential house of the applicant and the house of the accused due to which they are on visiting terms and about four months ago the said Khalid lured my minor daughter Rukayya into his trap and called her to his house at night by threatening her and raped her, four months passed in this. Due to which my minor daughter became pregnant. 3. That when my minor daughter's stomach started growing and she started vomiting, which made us suspicious, my wife asked the girl about this, then she told me in fear that Khalid has been raping me for the last four months and threatened me that if you tell your family about this rape, then I will kill you and defame you in the society, due to which I did not tell anything to anyone. 4. That after this the applicant went to the house of the said accused number 2 and told him that your son Khalid has raped my minor daughter and made her pregnant, this is a wrong act, on which Rasheed got very furious and abused me and beat me and pushed me out of his house and said that whatever action you want to take, do it, nothing will happen to us. 5. That the accused Khalid and his family members are criminals who are now pressurizing the applicant and his family not to take any action regarding the above incident, whereas the accused Khalid has raped my minor daughter and made her four months pregnant, which is a crime under the law. Therefore, I request you to take legal action and file a case against the above-mentioned



accused Khalid for raping my minor daughter Rukayya, making her pregnant and threatening to kill her. It will be a great favour from you. Date 21.05.2023 Applicant Israel son Nasrudin resident of village Malv Police Station Sadar Nuh District Nuh Mobile No. 9992486186.”

It is submitted that the petitioner is the younger brother of the complainant i.e. chacha of the victim. The petitioner has been falsely implicated in the present case as is evident from the DNA report (Annexure P-2). As per the said report it is the DNA of the complainant himself that has matched with the samples submitted by the victim, and with the aborted fetus of the victim. Whereas the DNA report in respect of the petitioner is negative. In this regard, learned counsel refers to the Conclusion part of the said report (at page No. 16 of the paper book). Learned counsel further submits that the petitioner has been in custody since 02.06.2023 as undertrial. No useful purpose would 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 vehemently opposes prayer made on behalf of the petitioner and, on instructions from Inspector Raj Bala, submits that the victim was stated to be 14 to 16 years of age at the time of commission of offence; whereas the petitioner was 37 years of age. The victim in her statement under Section 164 Cr.P.C., as also in her deposition as PW1 has supported the prosecution case with regard to the petitioner.

Learned counsel for the State, on instructions from Inspector



Raj Bala, further informs that there are 28 witnesses in the present case, out of which only 4 witnesses including the victim and the complainant, have been examined so far.

Learned counsel for the State files custody certificate dated 16.09.2024, which is taken on record, as per which the petitioner has been in custody as an undertrial for a period of 1 year, 3 months and 14 days.

Learned counsel for the complainant appearing on VC opposes prayer made on behalf of the petitioner and submits that the DNA report in the present case has been exchanged. On a Court query as to how the DNA of the aborted fetus of the victim can be matched with the complainant, learned counsel for the complainant has no reply.

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 1 year, 3 months and 14 days undergone by the petitioner as an undertrial; b) no other case is pending against the petitioner as evident from the custody certificate placed on record; c) material witness i.e. the victim already stands examined as PW1; and d) out of total 28 witnesses, 4 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-Khalid s/o Rashid, is ordered to be released on regular bail on his furnishing bail/surety bonds to the satisfaction of



However, it is made clear that nothing stated above shall be construed as an expression of opinion on the merits of the case.

Divyanshi

(NIDHI GUPTA)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No