

CRM-M-38313-2023 -1-

220 IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-38313-2023
Date of decision: 29th April, 2024

Vishal Singh
...Petitioner(s)
Versus
State of Punjab
...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. R.S. Sidhu, Advocate for the petitioner.
Mr. A.S. Samra, AAG, Punjab.

MANISHA BATRA, J (ORAL):-

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

FIR No.	Date	Police Station	Sections
223	15.10.2020	Sadar Patti, District Tarn Taran	376(2)(L) of Indian Penal Code, 1860 (for short 'IPC')

2. Brief facts of the case relevant for the purpose of disposal of this petition are that the aforementioned FIR was registered on the basis of complaint lodged by complainant 'R' (name withheld) alleging therein that the victim 'K' (name withheld) who was her mentally challenged daughter had gone outside their house without informing them on 13.10.2020 at about 9:30 AM. She also used to go outside house without informing her family members previously also. On finding her to be missing, the complainant along with her husband and brother started making search for her and when

they reached near the fields of Ex-sarpanch of their village, they heard the cries of their daughter and rushed towards that side. They noticed the petitioner while coming out of the crop grown in the field and running away. On reaching inside, they found the victim to be lying in semi nude condition and blood was oozing out of her private parts. She was rushed to the hospital. Her medical examination was also conducted. As the victim herself was not in a position to record her statement therefore, the statement of complainant i.e. her mother under Section 164 of Cr.P.C. was recorded. The petitioner was arrested on 16.10.2020. He was also medically examined. After completion of necessary investigation and usual formalities, challan was presented in the Court and presently the petitioner is facing trial for the commission of the offence punishable under Section 376(2)(L) of IPC.

3. The present petition has been filed by the petitioner on the grounds and it has been argued by his counsel that the parents of the victim have not supported the prosecution case and have not implicated the petitioner in the commission of the subject offence. The trial is likely to take time. As per the version of the prosecution itself, the vaginal swabs of the victim which were sent for forensic examination, have gone missing and therefore, there is no forensic evidence as against the petitioner. He is in custody for a period of more than two and half years. His further detention would not serve any useful purpose. Accordingly, it is argued that the petition deserves to be allowed.

4. Status report has been filed by respondent-State as per which, the victim had been medically examined and her vaginal swabs were sent for

DNA analysis. Due to lapse on the part of some police official, the vaginal swabs had gone missing. The petitioner had been specifically named in the FIR as well as in the statement recorded by the mother of the victim under Section 164 of Cr.P.C.. It is further argued that though the parents of the petitioner have not supported the prosecution case but her maternal uncle 'G' (name withheld) who appeared as PW-6 has fully supported the prosecution case. The allegations against the petitioner are serious in nature. There are chances of his absconding if extended benefit of bail. Good number of witnesses have since been examined and there is nothing on record to show that there would be any undue delay in conclusion of the trial. Therefore, it is argued that the petition does not deserve to be allowed.

5. I have heard learned counsel for the petitioner as well as learned State counsel at considerable length and have gone through the record carefully.

6. As per the allegations, as on 13.10.2020, the petitioner had ravished the victim who is specially abled daughter of the complainant. A copy of MLR of the victim has been placed on record as per which, small superficial mucosal tear was found present near fourchette of the victim, her hymen was found to be torn and while conducting finger examination, the fingers were smeared with blood. On the basis of these observations, even in the absence of any DNA report, it can be presumed that the possibility of the victim being subjected to rape could not be ruled out.

7. Copies of the statements of the mother of the prosecutrix (PW-1) and her father (PW-2) have been produced on record and a perusal of the

same reveals that though both these witnesses stated that on 13.10.2020, the prosecutrix had gone missing and they found her near the Phirni of the village, while crying and blood was also oozing out of her private parts but both of them did not implicate the petitioner in the subject crime rather they categorically denied that the petitioner had committed rape upon the victim who is a specially abled twenty years old girl. Learned State counsel has placed on record copy of statement of PW-6 'G' (name withheld) who is maternal uncle of the petitioner. In his sworn deposition shown to be recorded on 30.01.2024, he supported the prosecution version with regard to the victim who is her niece having gone missing from the house and then about the fact that he along with his sister and brother-in-law started making serach for her. He stated that on hearing some shrieks from the agricultural land belonging to Ex-sarpanch Jatinder Singh they rushed to that direction and found that the petitioner while fleeing from the fields. He also stated that he had identified the petitioner and had seen the victim while standing in a semi nude condition and she was bleeding. He also deposed that the respectable members of their area had tried to bring out compromise between the parties but no such compromise was arrived at. Though, during cross-examination, he stated that he could not hear the cries of his niece and her sister had told about this fact to her but it is clear from his testimony that he could not be shattered on the point that the victim was found in the fields in a semi naked condition and the petitioner was seen by him while fleeing from the spot. The fact that the parents of the victim did not support the prosecution case might be due to some out of Court settlement with the

petitioner though this court cannot go into that question at this stage, since it is for the trial Court to decide the same. However, keeping in view the nature of the evidence which has come on record in the form of testimony of PW-6 ‘G’ i.e. maternal uncle of the prosecutrix coupled with the fact that as per the medico legal report small superficial mucosal tear was found present near fourchette of the victim, her hymen was found to be torn and while conducting finger examination the fingers were smeared with blood and the opinion as given that the possibility of the victim being subjected to rape could not be ruled out but without meaning to make any comment on the merits of the case, I am of the considered opinion that no case for extending benefit of regular bail has been made out as against the petitioner. Hence, his plea for bail is rejected and the petition is dismissed.

8. Since the main petition has been dismissed, pending application if any is rendered infructuous.

[MANISHA BATRA]
JUDGE

29th April, 2024
Parveen Sharma

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| 1. Whether speaking/ reasoned | : | Yes |
| 2. Whether reportable | : | Yes |