

CRM-M-39250-2023 -1-

103 IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-39250-2023
Date of decision: 22nd April, 2024

Arun Kumar @ Arun @ Aman
...Petitioner(s)
Versus
State of Punjab
...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Ajiteshwar Singh, 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
84	30.06.2022	Maqsudan, Jalandhar Rural	376 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 statement recorded by the prosecutrix 'H' (name withheld) alleging therein that her parents had passed away and she was now living with her paternal uncle and aunt. In September, 2021, she had gone to her maternal aunt's (*maasi*) house for pursuing her mass communication course from Jalandhar. She was staying there with her maternal aunt and the petitioner, who is husband of her maternal aunt. She alleged that in the first week of

November, she was alone at home when the petitioner entered inside her room and after closing the door of the same, he took hold of her and told her that he wanted to have sexual relations with her. On her refusal, he tried to commit rape upon her but on her saying that she would disclose about this to her aunt, he threatened to kill her and left her. Similar attempts were made 3-4 days thereafter and he succeeded in ravishing her repeatedly for 2-3 days. She had fallen sick thereafter and kept vomiting. She came back to her paternal aunt's house in February, 2022 to Delhi. Her father had died on 19.06.2022. On 26.06.2022, she had gone to Haridwar with her family members for the purpose of performing some ceremonies, when while on way, she had felt severe abdominal pain. They had stayed at a Dharamshala after reaching Haridwar. She went to toilet, a female baby came out of her womb. Out of fear, she threw the baby there itself and rushed out of the washroom and changed her clothing. Her condition deteriorated in the evening of 27.06.2022, as she was heavily bleeding. She was taken to Guru Govind Singh Hospital, Delhi. As per the report of the doctor, who had conducted her medical examination, umbilical cord was found hanging out of her introitus. The victim also gave history of her being sexually assaulted by the petitioner and about delivering a premature baby on 26.06.2022. Her Statement under Section 164 of Cr.P.C. was recorded. During the course of investigation, it was found that dead body of a new born female infant was recovered by the police from Bharti Bhawan, Dharamshala, Haridwar wherein the victim had stayed. Inquest proceeding under Section 174 of

Cr.P.C. and post mortem examination of the girl child was conducted and DNA sample had been obtained. The petitioner was arrested on 04.07.2022. His blood samples alongwith the blood samples of the victim and DNA sample of the child were sent to FSL. 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 of IPC. He had filed an application for grant of regular bail before the learned trial Court, which was dismissed on 25.11.2022.

3. The present petition has been filed by the petitioner on the grounds and it has been argued by his counsel that infact, a consensual romantic and intimate relationship had been developed between the prosecutrix who is major and himself which continued till February, 2022, when the prosecutrix had left for her parental home. The doctor who had conducted medical examination of the prosecutrix had admitted that possibility of factum of consent could not be ruled out. He has been falsely implicated in this case. The delay in lodging of the FIR has not been explained by the prosecutrix. There could be no possibility of threat perception in the mind of the prosecutrix for not reporting the matter to the police as she left the home of the petitioner in February, 2022. The trial is likely to take time. The DNA report has not helped the prosecution in connecting him with the commission of offence of rape upon the prosecutrix. Hence, it is urged that the petitioner deserves to be released on

bail.

4. Status report had been filed by the respondent/State, as per which, there were specific and serious allegations against the petitioner. The petitioner had even not denied the factum of his having sexual relations with the prosecutrix. Though the DNA profile of still born baby could not be generated which could be compared with the DNA profile of the petitioner but it stood proved from the medico legal report as well as the testimony of PW-8 Dr. Kumari Aprajeeta who had conducted medico legal examination of the prosecutrix on 27.06.2022, that her umbilical cord was found hanging out of the introitus and she had given history of her being sexually assaulted by her uncle in February, 2022. Her statement also proved that there was adherent placenta and sepsis and therefore, the victim was referred to higher medical centre. It is argued that the plea as taken by the petitioner of his having a consensual and romantic relationship with the victim was belied from the statement recorded by the prosecutrix at the time of lodging of FIR as well as while recording her sworn deposition. It is argued that most of the prosecution witnesses have already been examined and the trial is at its fag end. There are chances of petitioner's absconding if extended benefit of bail. 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 in the FIR, the petitioner had ravished the

victim in the month of November, 2021 and thereafter, also for 2-3 times and had impregnated her. The victim had gone back to her parental house in the month of February, 2022. Her father had died in June, 2022 and when she along with her family members had gone to perform some rituals to Haridwar, she had given birth to a pre-term female baby in Dharamshala at Haridwar. The fact that she had delivered a pre-term child stands proved from the testimony of PW-8 as per which the umbilical cord of the prosecutrix was found hanging out of introitus and she had come as a case of heavy bleeding on 27.06.2022 as well as from the fact that the recovery of a dead female infant had been effected by the police authorities from the same Dharamshala where the victim had stayed. According to the petitioner, it was a case of romantic and consensual relationship whereas this fact has been denied by the prosecutrix. It is neither appropriate nor feasible for the this Court to draw any conclusion as to the nature of the relationship between the prosecutrix and the petitioner and it is only on the basis of thorough assessment and due evaluation of the evidence produced before the trial Court that any finding in this regard can be given by it. However, keeping in view the serious nature of the allegations as levelled against the petitioner by the prosecutrix, the fact that she had become pregnant and had delivered a pre-term dead child on 26.06.2022, the quantum of sentence which the conviction may entail and the attendant 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.
8.
- Since the main petition has been dismissed, pending application if any is rendered infructuous.

[MANISHA BATRA]
JUDGE

22nd April, 2024
Parveen Sharma

1. Whether speaking/ reasoned

:

Yes
2. Whether reportable

:

Yes