

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

208

CRM-M-40803-2023

Date of decision: 13.03.2024

Sunil Kumar

..... Petitioner

Versus

State of Haryana

..... Respondent

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

PRESENT: Mr. Shikhar Goel and Mr. Abhimanu, Advocates
for the petitioner.

Mr. Surinder Kumar Dagar, DAG, Haryana.

NIDHI GUPTA, J. (ORAL)

1. Prayer in this 3rd petition filed under Section 439 Cr.P.C., is for grant of regular bail to the petitioner in case FIR No. 125 dated 25.03.2021 registered under Sections 363 and 120-B IPC and Sections 6 and 17 of the the Protection of Children from Sexual Offences Act, 2012 at Police Station Saran, District Faridabad.

2. The aforesaid FIR was registered on the basis of complaint moved by the father of victim and the same reads as follows:

“.....Sir, it is submitted that I Khalid s/o Sh. Abdul Karim am a r/o H.No.9, Near Bala Ji Computer, Nangla Enclave, Chacha Chowk, Sohna Road, Faridabad. Sir, my daughter Simmi, aged about 13 years, went away from her house on 25.03.2021 at about 5 pm, as per her own wish without disclosing anything who has not come back to the house till now who was searched at my own level at every possible place but her she has not been found anywhere. Therefore, now I have come regarding going of my daughter Simmi from the house or her missing. That measurement of my daughter: colour fair, round face, medium body and

height is 5 ft and she has worn green coloured suit and sandal in feet. Kindly register my report and my daughter may be searched.....”

3. Learned counsel for the petitioner, *inter alia*, submits that the petitioner has falsely been implicated in the present case, inasmuch as, the victim was recovered from Prayagraj (Allahabad) with the help of one Raja Bhaiya. It is stated that the alleged date of incident is w.e.f. 25.03.2021 till 05.04.2021. It is submitted that the petitioner had not even accompanied the victim to Jaipur, that he was present in Faridabad and he had gone to Dausa (Rajasthan) only for a short while to visit his maternal uncle. It is further submitted that the victim lives next door to the petitioner. There are total 06 accused in the present case, out of whom one lives in Agra; 02 live in Faridabad and 03 live in Prayagraj. It is contended that petitioner has been in custody since 11.04.2021, for a period of almost 03 years and the trial is nowhere near its conclusion, therefore, it is a clear violation of the provisions of Article 21 of the Constitution of India to keep the petitioner behind bars. Thus, it is prayed that petitioner may be released on regular bail.

4. No other argument is raised on behalf of the petitioner.

5. *Per Contra*, learned counsel for the State vehemently opposing the prayer for grant of regular bail to the petitioner and submits that the victim in her statement dated 05.04.2021 (Annexure P-4) recorded under Section 164 Cr.P.C., has fully supported the case of the prosecution and she had stated therein that the petitioner wanted to forcibly marry her. In her statement dated 06.04.2021 (Annexure P-5) before the Child Welfare Committee, the victim had stated that the petitioner committed rape with her. Learned State counsel further submits that the victim and

the complainant have been examined by the trial Court on 27.07.2022, wherein both of them have fully supported that case of the prosecution in their respective testimonies. On instructions learned counsel submits that out of total 31 prosecution witnesses, 03 have been examined till date and the next date of hearing before the trial Court is 15.03.2024.

6. Learned counsel for the State has filed custody certificate dated 12.03.2024, which is taken on record, as per which the petitioner has been in custody as an undertrial for a period of 02 years, 11 months and 01 day. Further, learned counsel refers to challan (Annexure P-9) wherein it has been recorded that Kamlesh, sister of the petitioner who is also one of the accused in the present case, had got a disclosure statement recorded, stating therein that her brother-Sunil/petitioner herein had called her on 25.03.2021 in the night at 10:40 p.m. She further stated that at that time she was aware that her brother/petitioner herein had sent the victim to Agra.

7. I have heard learned counsel for the parties.

8. From the facts and circumstances of the case, it is clear that the petitioner had committed aggravated penetrative sexual assault upon the minor victim, as is evident from the statements of the victim recorded under Section 164 Cr.P.C. and before the Child Welfare Committee dated 05.04.2021 and 06.04.2021 (Annexures P-4 and P-5, respectively) which are fully supported by the medical evidence. More so, the victim and the complainant in their respective testimonies before the learned trial Court have fully supported the case of the prosecution.

9. Merely, the facts that the petitioner is behind the bars since 11.04.2021 and trial is not likely to conclude in the near future, are no

grounds for grant of regular bail to the petitioner. Hon'ble Supreme Court in *Kalyan Chandra Sarkar vs. Rajesh Ranjan @ Pappu Yadav, Law Finder Doc Id # 69139*, has considered this issue and observed as under:-

“13.....In the impugned order it is noticed that the High Court has given the period of incarceration already undergone by the accused and the unlikelihood of trial concluding in the near future as grounds sufficient to enlarge the accused on bail, in spite of the fact that the accused stands charged of offences punishable with life imprisonment or even death penalty. In such cases, in our opinion, the mere fact that the accused has undergone certain period of incarceration (three years in this case) by itself would not entitle the accused to being enlarged on bail, nor the fact that the trial is not likely to be concluded in the near future either by itself or coupled with the period of incarceration would be sufficient for enlarging the appellant on bail when the gravity of the offence alleged is severe and there are allegations of tampering with the witnesses by the accused during the period he was on bail.”

10. Applying the aforesaid law laid down by the Hon'ble Supreme Court to the glaring peculiar facts and circumstances of the present case; and more particularly, the material on record, gravity of the offence, *prima facie* involvement and complicity of the petitioner in ruining the life of a minor victim aged only around 13 years, I find no ground is made out at this stage to grant regular bail to the petitioner. Accordingly, the present petition is **dismissed**.

11. Nothing said here-in-above shall be construed as an expression of opinion on the merits of the case.

13.03.2024
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(NIDHI GUPTA)
JUDGE

Whether speaking/reasoned Yes/No

Whether Reportable Yes/No