



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

277

CRM-M No.38911 of 2024
Date of Decision: 03.10.2024

Naseem ... Petitioner

Versus

State of Haryana ... Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Saifuddin Shams, Advocate,
for the petitioner.

Mr. Arjun Lakhanpal, Addl. AG, Haryana,
for the respondent-State.

MANISHA BATRA, J. (Oral)

1. The instant one is the third petition for grant of regular bail as filed by the petitioner in case arising out of FIR No.207 dated 11.05.2022 registered under Sections 363, 366-A, 376-D and 506 of IPC and Section 6 of the Protection of Children from Sexual Offences Act, 2012 (For short “POCSO Act”) at Police Station Sadar Tauru, District Nuh, on the basis of statement recorded by the prosecutrix “F” (name withheld) making allegations of her being kidnapped by the petitioner and co-accused Shad and Taufeeq and three more persons, of taking her on a motorbike and then in a car to some other place and about her being subjected to gang rape by all of them and also making her videos and taking objectionable photographs. After registration of FIR, investigation

2024:PHHC:131609



proceedings were initiated. The statement of the prosecutrix under Section 164 of Cr.P.C. was recorded. The present petitioner had been arrested on 21.05.2022. He had been identified by the prosecutrix as one of the persons who had committed rape upon her. As the remaining accused could not be arrested, therefore, after completion of investigation, challan was presented against the petitioner and presently, he is facing trial. Some of the accused were arrested subsequently. As already mentioned, he had filed petitions for grant of regular bail previously which have been dismissed.

2. It is argued by learned counsel for the petitioner that he is in custody since 21.05.2022. He was not named in the FIR. Thirteen out of twenty two witnesses have since been examined. The trial is likely to take time. The DNA report has since been received and the same does not incriminate the petitioner and does not connect him with the subject offences. There are no chances of petitioner's intimidating the witnesses since the material witnesses including the prosecutrix stand examined. There are material contradictions in the statements recorded by the prosecutrix during investigation and before the Court. The prosecution version is quite improbable. It is submitted that the extended period of incarceration and the above mentioned circumstances have furnished a new ground in his favour to seek concession of bail. Therefore, it is urged that the petition may be allowed.

3. Status report has been filed by the respondent-State. It is submitted therein and learned State counsel has vehemently argued that there are serious and specific allegations against the petitioner. He had been identified by the prosecutrix during investigation and also while recording

2024:PHHC:131609



her sworn deposition in the Court. Only because of the fact that the DNA generated from the vaginal slides/swabs of the prosecutrix is not found to be similar to the male DNA profile generated from the blood of the present petitioner, he cannot be considered to be innocent. The trial is going at a proper pace and there is nothing on record to show that there would be any undue delay in conclusion of the same. Therefore, it is urged that the petition does not deserve to be allowed.

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

5. The first petition filed by the petitioner for grant of regular bail has been dismissed as withdrawn vide order dated 16.03.2023 and the second petition as filed by the petitioner for grant of regular bail had been dismissed vide order dated 28.02.2024. The instant one has been filed within a period of six months of passing of the said order. It is well settled proposition of law that when successive bail applications come before the Court, the Court should be very cautious while considering the same. Successive bail applications can be entertained by the Court when some substantial change is established by the accused thereby making him entitled for grant of bail. Reference in this regard can be made to ***State of Maharashtra Vs. Captain Buddhikota Subha Rao, AIR 1989 Supreme Court, 2292***, wherein it was observed so and it was further held that the Court should not pass an order of release of an accused on bail in successive bail application merely establishing some cosmetic change between time gap of two applications. There must be some drastic change during the period between two applications. Reference can also be made to ***Kalyan Chandra***

2024:PHHC:131609



Sarkar Vs. Rajesh Ranjan @ Pappu Yadav and another (2004) 7 SCC 528,

wherein it was observed by Hon'ble Supreme Court that where the offence alleged against an accused is grave, bail cannot be granted only on the ground of long incarceration.

6. After hearing the contentions as raised by learned counsel for the petitioner, I am of the considered opinion that no substantial or drastic change from the date of dismissal of the previous petitions as moved by the petitioner has been pointed out or made out from the pleas taken by the petitioner. Merely the extended/prolonged period of incarceration or examination of some material witnesses is not a ground to extend any such benefit. The petitioner along with the co-accused is alleged to have subjected the minor prosecutrix to gang rape and criminally intimidated her. The copy of statement of the prosecutrix has been placed on record as Annexure P-6 and on a perusal of the same, it is apparent that she not only identified the petitioner as one of the persons who had kidnapped her but also stated that he had committed rape upon her. Though she did not know the name of the petitioner, however, this fact does not help the petitioner as she duly identified him. There are serious allegations against the petitioner. There is nothing on record to suggest that there would be any undue delay in conclusion of the trial or it is being conducted at a snail's pace. Keeping in view the nature of the allegations as levelled against the petitioner, the quantum of sentence which the conviction may entail and the attendant facts and circumstances, in my considered opinion, it is not a fit case to enlarge the petitioner on bail, especially in view of the fact that no drastic or material change in the circumstances has been made out.

2024:PHHC:131609



7. In view of the discussion as made above, but without meaning to make any comment on the merits of the case, I am of the considered opinion that the petition does not deserve to be allowed. Hence, the same is dismissed.

03.10.2024
manju

(MANISHA BATRA)
JUDGE

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