



CRM-M-42893-2023 (O&M)

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-42893-2023 (O&M)

Reserved on:03.09.2024

Date of Pronouncement:- 18.11.2024

SUNITA DEVI

.....PETITIONER

Vs.

STATE OF HARYANA

....RESPONDENT

CORAM: HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN

(As on the reserved date)

Present: Mr. Randeep Singh, Advocate, &
Mr. Gurinder Singh, Advocate,
for the petitioners.

Mr. Pawan Kumar Jhanda, D.A.G., Haryana.

Mr. Maneet Kaushik, Advocate, for
Mr. Ashit Malik, Advocate,
for the complainant.

HARPREET KAUR JEEWAN, J.

1. The present petition has been filed under Section 439 Cr.P.C. for grant of regular bail to the petitioner in case bearing FIR No.02, dated 03.01.2023, under Sections 450, 376 (2) (n) and 506 of the Indian Penal Code, 1860 (for short '*the IPC*') read with Section 120-B thereof and Sections 6, 8 and 17 of the Protection of Children from Sexual Offences, Act, 2012 (for short '*the POCSO Act*'), registered at Police Station Sadar Thanesar, District Kurukshetra.

**CRM-M-42893-2023 (O&M)**

2. The petitioner is the mother of the prosecutrix, who is aged about 17 years. The allegations against the petitioner are that she used to force her daughter-prosecutrix to do wrong acts with her co-accused Surender, who is her brother-in-law, i.e. (husband of cousin of the prosecutrix). As per the statement of the prosecutrix recorded under Section 164 Cr.P.C., on 10.04.2022, Surender (co-accused of the petitioner) came to her house and at that time she was alone. Co-accused of the petitioner is alleged to have violated the prosecutrix forcibly. The prosecutrix informed her mother about the said fact but she was threatened to not disclose this fact of her pregnancy to anyone.

2.1 It is further in allegations that the petitioner along with her co-accused-Surinder and with the aid of their friend got the pregnancy of the prosecutrix aborted from Karnal.

3. Counsel for the petitioner *inter alia* contends that the petitioner is in custody since 05.01.2023, i.e. for a period of more than 01 year and 10 months. The investigation is already complete. The petitioner has been falsely implicated in this case.

3.1 Learned counsel for the State while referring to the status report, dated 13.05.2024, by way of an affidavit of Sh. Om Parkash, HPS, DSP, Ladwa, Kurukshetra, has submitted that the petitioner is mother of the victim. Considering that the allegations are serious in nature as such opposed the present petition.

4. I have considered the submissions.

5. As per the status report filed by the State, on 21.02.2023, Dr. Davita Maan, as well as the complainant-victim and her father were joined

**CRM-M-42893-2023 (O&M)**

in the investigation. No written record regarding abortion of the complainant was produced. There was no evidence on record, as such, the offence under Section 313 IPC was deleted and Sections 376 (2) (n) and 450 IPC were added. It has also been confirmed that after recording of the statement of the victim, an application was moved under Section 313 Cr.P.C. for summoning of Dr. Kavita Mann in the Om Maternity and General Hospital, Hansi Road, Karnal, as an additional accused, which has also been dismissed by the learned trial Court, vide order dated 06.11.2023 (Annexure R-4).

6. The aforesaid allegations against the petitioner and especially, the allegation that the prosecutrix was pregnant and the petitioner, as well as her co-accused with the aid of their friend got her abortion conducted from Karnal, are highly debatable and would be a matter of trial. The trial Court while dismissing the application under Section 319 Cr.P.C. vide Annexure R-4 had considered this fact that the doctor was not involved in the matter and there was no record that any abortion of the victim-prosecutrix was got conducted at any point of time. It was further observed by the trial Court that even if the evidence of the victim is considered, still no case is made out to allow the said application, as there is no *prime facie* evidence on record to show that the doctor was involved in the matter at any point of time.

7. The petitioner is 37 years of age female. As per the custody certificate dated 29.08.2024, she is in custody for a period of 01 year, 07 months and 24 days. There is no history of any other criminal case against the petitioner. The investigation is complete. The final report (*'challan'*)



CRM-M-42893-2023 (O&M)

has been presented. Charges have been framed. Examination-in-Chief of the prosecutrix has already been recorded. The conclusion of the trial is going to take time. At present out of total 15 prosecution witnesses, only 04 have been examined.

8. Keeping in view the aforesaid facts and circumstances of the present case and the fact that the petitioner is a female and she has been in custody for more than 01 year and 10 months, the present petition is allowed. The petitioner is ordered to be released on bail on her furnishing adequate bail bonds and surety bonds to the satisfaction of the learned trial Court/Duty Magistrate concerned.

9. However, the petitioner shall furnish an undertaking before the trial Court that she would not stay in the same house where the prosecutrix is staying, during the pendency of the present trial and would not influence or threaten the prosecutrix in any manner. In case of violation of such conditions, the present order shall be liable to be vacated. Before accepting the bail bonds, the trial Court shall ensure to have an undertaking of the petitioner to this effect.

10. It is made clear that nothing observed hereinabove will be taken to be an observation on the actual merits of the case, which would be taken up by the learned trial Court wholly on the basis of evidence led/gathered before it.

11. Pending miscellaneous applications, if any, also stand disposed of.

November 18, 2024
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(HARPREET KAUR JEEWAN)
JUDGE