

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

224

CRM-M No.43774 of 2023 (O&M)
Date of Decision: 20.03.2024

Mohd. Rahul ... Petitioner

Versus

State of Haryana ... Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Afjal Hussain, Advocate,
for the petitioner.

Mr. Neeraj Poswal, AAG, Haryana

Mr. Saleem Ahmed, Advocate,
for the complainant.

MANISHA BATRA, J.(Oral)

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

FIR No.	Police Station	Sections
417	Sadar Nuh, District Nuh	323, 354-D, 376, 506 and 34 of IPC and 6 of Protection of Children from Sexual Offences Act, 2012 (For short “POCSO Act”)

2. Brief facts of the case relevant for the purpose of disposal of the present petition are that the aforementioned FIR was registered on 28.07.2022 on the basis of a written complaint submitted by the complainant "M" (name withheld) alleging therein that her husband who

Neutral Citation No. 2024:PHHC:040665

was a driver by profession, mostly used to stay away from house because of the nature of his job. The present petitioner who is living in his neighbourhood had been keeping an evil eyes on her minor daughter "A" (name withheld) who used to stalk whenever she left her house and also used to make obscene overtures towards her. Her daughter had told about this fact to them and her husband and herself had made complaint about the act and conduct of the petitioner to his father who had assured to not to do so. She alleged that on 11.07.2022, the petitioner entered inside her house when her daughter "A" was alone in the house and by extending threats forcibly committed rape upon her. When the complainant came back, she found her daughter to be crying and on asking, she disclosed that the petitioner had been repeatedly ravishing her since 27.12.2021.

3. As per the further allegations, the complainant then went to make complaint to the father of the petitioner but he rather started hurling abuses to them by taking the side of his son. Then the petitioner along with his father and other co-accused opened an attack upon the complainant and her other family members thereby injuring them and also extended threats to kill them. The complainant including other injured were taken to the hospital and were remained under treatment. On the basis the statement so recorded and after registration of FIR, investigation proceedings were initiated. The statement of the victim was recorded under Section 164 of Cr.P.C. Her medical examination was conducted. The petitioner was arrested on 17.09.2022. He was also medically examined. After completion of necessary investigation and usual formalities, challan under Section 173 Cr.P.C. was presented in the Court and presently, the petitioner is facing trial for

Neutral Citation No. 2024:PHHC:040665

commission of the aforementioned offences. He had moved an application for grant of bail before the learned trial Court which was dismissed vide order dated 27.07.2023.

4. It is argued by learned counsel for the petitioner that he has been falsely implicated in this case. There is delay of 17 days in reporting about the incident which had allegedly happened with the victim on 11.07.2022 and a delay of about one year in disclosing about the incident which allegedly occurred with the victim as on 27.12.2021. As per the medical report, no internal or external injury was found on the person of the victim. Infact, this FIR was a counter blast to the FIR No.396 dated 16.07.2022 registered by the father of the petitioner against the members of the complainant party at Police Station Sadar Nuh. A false case has been planted as against the petitioner. There are major contradictions in the statements of the victim which were recorded under Section 164 of Cr.P.C. as well as recorded before the Court and the same have created a serious doubt about the veracity of the version of the prosecution. The DNA report showing that the semen detected upon the salwar of the victim matched with the male DNA profile generated from the blood sample of the petitioner cannot be considered to be authentic in view of the fact that the victim had been medically examined after a gap of 18 days and, therefore, there was no possibility of detection/presence of any semen on her clothing. With these broad submissions, it is argued that the petitioner deserves to be given concession of bail.

5. Status report has been filed by the respondent-State as per which the seminal stains detected on the salwar of the victim which was

Neutral Citation No. 2024:PHHC:040665

provided by the victim to the doctor who had conducted her medico legal examination on 29.07.2022 have matched with the blood samples of the petitioner. In her statement recorded under Section 164 of Cr.P.C., the prosecutrix had narrated the entire incident. Now her statement before the Court has also been recorded and she has fully supported the prosecution version. It has also been submitted by learned State counsel assisted by learned counsel for the complainant that a substantial number of prosecution witnesses stands examined. There are no chances of any delay in conclusion of the trial. There are serious and specific allegations against the petitioner. Therefore, it is argued that the petition does not deserve to be allowed.

6. I have heard learned counsel for the petitioner and learned State counsel assisted by learned counsel for the complainant at considerable length and have gone through the record carefully.

7. As per the allegations levelled in the FIR, the petitioner was keeping an evil eye upon the prosecutrix and had been sexually harassing her and used to stalk her whenever she went outside her house. It is also alleged against him that as on 27.12.2021, when the victim was alone in her house and was taking bath, he had entered therein and had prepared a video of her in that condition and then committed rape upon her by extending threat to kill her and to make her video viral on social media and further that he had been ravishing her thereafter, whenever he found an opportunity. The allegations are also that this fact had come into the knowledge of the complainant i.e. mother of the minor victim on 11.07.2022 when she had found the victim while crying on reaching home and at that time she had disclosed that the petitioner had committed rape upon her on that date and

Neutral Citation No. 2024:PHHC:040665

had been doing so with her since 27.12.2021. No doubt, there is delay of 17 days in reporting to the matter to the police and the case of the petitioner is also that the FIR lodged against him is a counter blast to the FIR No.396 dated 16.07.2022 lodged by his father against the family members of the complainant. The petitioner has also raised questions as to authenticity of the DNA report by arguing that there was no possibility of detection of any seminal stains on the salwar of the victim which had been handed over by her to the doctor on 29.07.2022 whereas according to her, she was lastly ravished on 11.07.2022. At this stage, when this Court is considering the plea of the petitioner for grant of regular bail, it is neither feasible nor appropriate to draw any conclusion or to return any finding as to whether the victim was repeatedly ravished/subjected to acts of aggravated penetrative sexual assault at the hands of the petitioner or not? This is also not the stage when this Court can decide that there is any manipulation in the DNA report as per which the semen detected on the salwar of the prosecutrix matched with the DNA blood profiling of the petitioner. The finding or decision on this point has to be given by the trial Court on a thorough assessment and evaluation of the evidence led by the parties during the course of trial. The trial against the petitioner is going at proper pace. A good number of witnesses have since been examined. The period of incarceration of the petitioner cannot be said to be a ground for extending benefit of bail to him. Keeping in view the gravity of the offences alleged to have been committed by the petitioner as against the minor prosecutrix, the quantum of sentence which the conviction may entail and the attendant facts and circumstances, I am of the opinion that the petition does not deserve to be allowed. Hence the

Neutral Citation No. 2024:PHHC:040665

same is dismissed.

8. It is clarified that observations made hereinabove shall not be construed as an expression of opinion on the merits of the case.
9. Miscellaneous application(s), if any, also stand disposed of.

20.03.2024
manju

(MANISHA BATRA)
JUDGE

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