

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-48059-2023 (O&M)

Reserved on: 08.02.2024

Date of Decision:- 13.02.2024

RAKESH KUMAR

.....PETITIONER

VS.

STATE OF HARYANA

..RESPONDENT

CORAM: HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN

Present: Mr. Shikhar Goel, Advocate,
for the petitioner.

Ms. Mayuri Lakhanpal Kalia, D.A.G., Haryana.

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. 157 dated 18.04.2021, under Sections 363 and 366 of the IPC and Section 6 of the Protection of Children from Sexual Offences Act, 2012, registered at Police Station Central District Faridabad.

2. As per the prosecution case, on 16.04.2021 at about 03:00 p.m., the prosecutrix who is aged about 14 years old left the house. The matter was reported to the police by the father of the prosecutrix alleging that he suspects that the present petitioner who is a neighbourer had enticed away his daughter on the allurements of marriage and the petitioner was also missing at that time.

3. Fresh status report, dated 05.02.2024, by way of an affidavit of Rajeev Kumar, the Commissioner of Police, Central, District Faridabad,

has been filed by learned State counsel. The same is taken on record. It is mentioned in the status report that the birth certificate Annexure R-1 was obtained from the school wherein the date of birth of the prosecutrix is recorded as 06.05.2008. The petitioner was arrested on 29.05.2021 and the victim was recovered from the custody of the petitioner. The medico-legally examination of the victim was got conducted. The medical examination of the petitioner was also got conducted. The victim was kept in observation at One Stop Centre, B.K. Hospital after COVID test. Thereafter, her statement was recorded before the Child Welfare Committee and her statement under Section 164 Cr.P.C. was also got recorded. On 10.06.2021, five sealed parcels were sent to the Regional Forensic Science Laboratory, Bhondsi for examination.

4. It is further mentioned in the status report that final report under Section 173 Cr.P.C. has been filed on 22.07.2021. The charges were framed and out of total 22 witnesses, 10 PWs have been examined. The victim has not supported the prosecution case but according to the DNA report and medical examination, the victim who is minor was subjected to rape.

5. Counsel for the petitioner contends that the prosecutrix has not supported the prosecution case in her statement recorded under Section 164 Cr.P.C., as well as in her statement recorded during the trial when she appears as PW-1. Even as per the medico legal examination report, (Annexure P-3), there were no marks of external injury.

6. It was further contended that date of birth of the prosecutrix is disputed as per the Aadhar card and the school certificate, her date of birth is 06.05.2008 whereas when she appeared as a witness before the trial

Court, she stated that her date of birth is 02.12.2008. It was further contended that the petitioner is in custody since 29.05.2021, the trial is going at snail's pace. The trial is going to take time, as such, no purpose would be served by keeping the petitioner in custody.

7. Even as per the medico-legal examination report (Annexure P-3), there was no marks of external injury. The authenticity of the report dated 14.06.2021 by the Regional Forensic Science Laboratory and the report dated 18.08.2023 by Forensic Science Laboratory, Madhuban, are doubtful. The colour of the clothes of the victim which was allegedly sent for examination differs from the report.

8. While relying upon the decision of Hon'ble the Himachal Pradesh Shimla High Court in **Raman Kumar vs. State of Himachal Pradesh** (Cr.A.No. 615 of 2019), decided on 26.09.2023, it was contended by counsel for the petitioner that evidentiary value of such a DNA report is doubtful where *prima facie* the authenticity of the sample is not established.

9. The State counsel opposed the bail application, on the ground of the gravity of the allegations. It was contended that the prosecutrix is minor. Though the victim has not supported the prosecution case but according to DNA report and medical examination, the minor was subjected to rape. As such, the petitioner is not entitled to bail. The medical evidence is yet to be recorded.

10. I have considered the aforesaid contentions in the present case.

11. The petitioner is in custody since 29.05.2021. The material witnesses have already been examined. The authenticity of the DNA report, as well as the appreciation of the testimony of the prosecutrix is a matter of

trial. There is no apprehension of tampering with the prosecution evidence since private material witnesses have already been examined.

12. Keeping in view the facts and circumstances and without making any comment on the actual merits of the case, the petition is allowed. The petitioner is ordered to be released on regular bail, subject to his furnishing adequate bonds/surety to the satisfaction of the trial Court/CJM, concerned.

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

(HARPREET KAUR JEEWAN)
JUDGE

February 13, 2024

nitin	Wether Speaking	Yes
	Whether Reportable	No