

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

205

CRM-M-47979-2023

Date of Decision: 22.03.2024

Suresh Kumar

.... Petitioner

Versus

State of Haryana

.... Respondent

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present: - Mr.Vikas Bishnoi, Advocate for the petitioner.

Mr. Surinder Kumar Dagar, DAG, Haryana.

NIDHI GUPTA, J. (ORAL)

The petitioner has filed the present 1st petition under Section 439 of the Code of Criminal Procedure, 1973, for grant of regular bail in case FIR No. 329 dated 15.09.2021 registered under Sections 328, 363, 366-A and 506 IPC and Section 25 of the Arms Act [Section 376(3) IPC and Section 4 of the Protection of Children from Sexual Offences Act, 2012 have been added and Sections 328 IPC and Section 25 of the Arms Act, were deleted during investigation] at Police Station Adampur, District Hisar.

The aforesaid FIR was registered on the basis of complaint moved by the victim herself, which is reproduced as under:-

“....Complaint against Suresh S/o Banwari, caste Bishnoi and he is residing with his uncle near Village Bodhia Bishnoian, Tehsil Adampur, District Hisar from last 6 months. Mob. No.82954-75529, 82954-52029. Respected Sir,

it is requested that myself Dimple D/o Sh. Pawan Kumar caste Bishnoi, R/o Village Sarangpur, Tehsil Adampur. District Hisar. That I am living in Village Bhana, Tehsil Adampur, District Hisar with my maternal grandmother and I am studying in 9th standard in private school at Bodhia Bishnoian and used to go to school daily in van from my Dhani. That on 13.09.2021 at 7:00 am, I was standing on the road for going to school in van from my Dhani, then at that time Suresh S/o Banwari, caste Bishnoi who is residing with his uncle from last 6 months at Village Bodhia Bishnoian, Tehsil Adampur, District Hisar came on the motorcycle there and he told me to accompany me on his motorcycle and told that he will drop me at the school and then when he was insisting for quite some time with me, I sat with him on his motorcycle. After that above said accused drove the bike in fast speed and reached Agroha turn and after reaching there he gave me a bottle of water and that I have it and after that I do not know anything. That the above said accused also used to talk on the phone which is in our house and used to threaten me by showing the pistol and used to say that if you would not go with him, then you will be frightened in your dreams. That the above said accused at around 3 pm, dropped me back near my Dhani in unconscious condition and while going he threatened that if I told this thing to anybody, then I kill you and your family members. Therefore, it is requested to your goodself that life and liberty of my family members be protected from the above said accused and legal action be taken and justice be given to me. I shall be highly thankful to you.....”

Learned counsel for the petitioner, *inter alia*, submits that the victim was about 14 years of age at the time of alleged occurrence. It is submitted that the date of incident is 13.09.2021, however, the FIR was registered, after unexplained delay of 02 days i.e. on 15.09.2021. It is

further submitted that the allegations against the petitioner are that at gun point, he had raped the victim. Learned counsel submits that however, the offences under Section 328 IPC and Section 25 of the Arms Act, have been deleted. FSL report is negative as no semen was detected. Statements of the victim as PW-1 as well as her maternal grand mother as PW-2 dated 02.08.2023 (Annexure P-2) have already been recorded by the learned trial Court. There are glaring loopholes in the testimonies of the said witnesses. The petitioner has been in custody since 14.01.2023. The trial is likely to take long time. No useful purpose will be served by further detention of the petitioner in custody. Thus, it is prayed that petitioner be released on regular bail.

Learned counsel for the State has filed custody certificate dated 20.03.2024, which is taken on record, as per which the petitioner has been in custody as an undertrial for a period of 01 year, 02 months and 05 days. As per custody certificate, there is no other case against the petitioner.

Learned counsel for the State vehemently opposing the prayer for grant of regular bail to the petitioner submits that at the time of alleged occurrence, the victim was 14 years of age. He further submits that the victim in her statement recorded under Section 164 Cr.P.C., has fully supported the case of the prosecution. Even before the trial Court the victim as PW-1 as well as her maternal grand-mother as PW-2 have fully supported the case of the prosecution. However, learned counsel admits that the FSL report is negative. Learned counsel for the State informs that out of total 23 prosecution witnesses, 06 have been examined, so far.

Having heard learned counsel for the parties, but without commenting on merits of the case, however, keeping in view the totality of the facts and circumstances of the case; including the custody period undergone by the petitioner and perusal of the custody certificate reveals that there is no other case against the petitioner; and the fact that material witnesses have already been examined; and also the fact that conclusion of trial will take considerable time, and no useful purpose would be served by further detention of the petitioner. Thus, the present petition is **allowed.**

The petitioner-Suresh Kumar S/o Banwari Lal is ordered to be released on regular bail on his furnishing bail/surety bonds to the satisfaction of the trial Court/Chief Judicial Magistrate/Duty Magistrate, concerned.

However, it is made clear that nothing stated above shall be construed as an expression of opinion on the merits of the case.

22.03.2024
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(NIDHI GUPTA)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No