

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

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CRM-M-48717-2023 (O&M)
Date of decision: 27.02.2024

Sandeep Singh

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Avtar S. Khinda, Advocate
for the petitioner.

Mr. Amandeep Singh Samra, AAG, Punjab.

MANISHA BATRA, J. (Oral)

1. This petition has been filed by the petitioner under Section 439 Cr.P.C. seeking regular bail in case bearing FIR No. 14 dated 15.03.2022, registered under Sections 363 and 366-A of the IPC (Section 376 of IPC and Section 4 of the POCSO Act were added later on) at Police Station Kabirpur, District Kapurthala.
2. Brief facts of the case relevant for the purpose of disposal of this petition are that the aforementioned FIR was initially registered under Sections 363, 366-A of IPC on the basis of statement recorded by complainant 'S' (*name withheld*) alleging therein that the victim, who is her younger daughter 'SK' (*name withheld*), had gone to attend her school in the same

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morning. However, she did not return home till 3.00 PM. She had made inquiry from the auto van driver, who disclosed that she was dropped in the village by him. She suspected that her daughter had been allured and kidnapped by accused-Prabhjot Singh in his vehicle bearing registration number PB-08-CD-6069 on the pretext of performing marriage with her. On the same day, the prosecutrix along with her mother reached at the Police Station and recorded her statement to the effect that accused Prabhjot Singh was two years' senior to her in the School, wherein she had been studying. She used to call him telephonically but her parents had come to know about this fact and had raised objection, due to which, she had stopped talking to him but he used to keep on stalking her. She also alleged that on 14.03.2022 also, he had followed her till her house when she was returning from school and also tried to stop her. She further disclosed that on the same day, when she had alighted from the auto van after returning from school and was about to reach her house then accused-Prabhjot Singh stopped her and on her resistance, he hit her head with something and thereafter, she was made to sit in a car. A handkerchief was put on her face. She disclosed that 2-3 unidentified youths with muffled faces were also present in the said Car. She also stated that she had lost her consciousness and on regaining the same, she found herself to be lying near the canal of Sultanpur Lodhi. She had walked up to some distance and on finding a grocery shop, she had made a call and disclosed about her presence to her mother and she was brought from there by her mother and other relatives.

3. As per the further allegations, on 16.03.2022, the statement of the prosecutrix was also got recorded before the concerned Magistrate wherein

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she reiterated the same allegations. The medico-legal examination of the victim was conducted on 16.03.2022. Then on 01.04.2022, the prosecutrix recorded her supplementary statement, wherein it has been alleged by her that Prabhjot Singh along with some more boys had forcibly made her to sit in an alto car on the day of incident and had taken her to some unknown place by covering her face with some handkerchief. She alleged that accused-Parabhjot Singh had committed rape upon her at some unknown place but it was out of fear that she could not earlier disclose about this fact as well as about the names of the other boys who were along with accused-Prabhjot Singh. She disclosed the names of those boys as Harpreet Singh alias Happy and Sandeep Singh while alleging that it was Sandeep Singh who was driving the car. She also disclosed that the wrong act was committed upon her by accused-Prabhjot Singh.

4. The present petitioner had surrendered on 09.04.2022 and he was also medico-legally examined and was interrogated. On the basis of supplementary statement of the prosecutrix, offences under Sections 376 of IPC and Section 4 of POCSO Act were added. Harpreet Singh was found to be a juvenile. He was apprehended and separate *challan* was prepared and submitted against him after completion of proceedings by the investigating agency before Juvenile Justice Board, Kapurthala. After completion of necessary investigation and usual formalities, *challan* under Section 173 Cr.PC was presented in the Court against the present petitioner and presently, he is facing trial for commission of the aforementioned offences. He had moved an application for grant of regular bail before the trial Court, which was dismissed, vide order dated 09.05.2022. Subsequently, the bail

applications filed before this Court as well as before Hon'ble Supreme Court had been dismissed as withdrawn.

5. The present petition has been filed by the petitioner on the grounds and it is argued by his counsel that he has been falsely implicated in this case. He was neither named in the first statement recorded by the prosecutrix nor in her statement recorded under Section 164 Cr.P.C. It was only after a gap of 15 days of the alleged incident that the prosecutrix had recorded her supplementary statement wherein she had taken his name and the only allegation that was levelled against the petitioner was that that he was driving the car when she was forcefully taken away by accused-Prabhjot Singh. It is submitted that the medico-legal examination report of the prosecutrix shows that no evidence of her being subjected to sexual intercourse had been found. No injuries were found on her person. The statements of the mother of the prosecutrix as well as the prosecutrix have since been recorded, wherein it is admitted by the prosecutrix that she had not levelled allegations of her being subjected to rape by the present petitioner either at the time of recording her statement before the police or as recorded under Section 164 Cr.P.C and also admitted that she had not named him as one of her kidnappers/the persons who had ravished her. It is also submitted that improvement had been made in the version of the prosecutrix as well as her mother qua involvement of the petitioner in the subject crime. He is in custody since 09.04.2022. The trial is likely to take time. No useful purpose would be served by keeping him in custody anymore. With these broad submissions, it is argued that the petitioner deserves to be given concession of bail.

6. Learned State counsel has filed status report, as per which, the involvement of the present petitioner in the act of kidnapping/abduction of the prosecutrix on 15.03.2022 stood fully established during the course of investigation. In her supplementary statement, the prosecutrix had specifically stated that the petitioner was the person who was driving the Alto car in which she had been kidnapped by the co-accused. The complicity of the petitioner in the subject offences has not been ruled out even from the statements as recorded before the trial Court also. During the course of trial, not only the prosecutrix but her mother had fully supported the prosecution version. The statement of prosecutrix is to be read as a whole wherein she has even stated that all the accused and the child in conflict with law had committed rape upon her after taking her to some unknown place. The FSL report is awaited. There is nothing on record to show that there would be any undue delay in conclusion of the trial as sufficient number of witnesses have since been examined. Therefore, it is argued by the petitioner that the petition is liable to be dismissed.

7. I have heard learned counsel for the petitioner and learned State counsel at considerable length and have gone through the record carefully.

8. As per the allegations, accused Prabhjot Singh, along with the present petitioner and the child in conflict with law, had forcibly taken away the prosecutrix from the custody of her lawful guardianship, while she, after attending her school, was about to reach at her house on 15.03.2022. The victim had reached her home on the same evening and had got recorded her statement, in which, she had alleged that it was the accused Prabhjot Singh who along with 2-3 unknown youths had forcibly made her sit in the car and

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had taken her somewhere. No doubt in her initial statement as well as in her statement recorded under Section 164 Cr.P.C, she had not named the present petitioner. However, the fact that cannot be ignored is that it was her consistent stand that co-accused Prabhjot Singh was accompanied by 3-4 youths. In her supplementary statement, she has stated that the petitioner was driving the vehicle at the time when she was being kidnapped by the co-accused. Therefore, the complicity of the petitioner in the commission of offence punishable under Section 363 of IPC for kidnapping the minor prosecutrix cannot be ruled out at this stage. Further, it was also the version of the prosecutrix that she had been ravished at the hands of accused Prabhajot Singh. No doubt, in her sworn deposition, she has stated that all the accused including the child in conflict with law had committed rape upon her, however, even if it is assumed for the sake of arguments that the prosecutrix has improved her version during the course of recording her statement in the trial and falsely levelled allegations qua her being subjected to rape at the hands of the present petitioner also, still, the allegations as levelled against the petitioner are serious because his connivance and his presence at the time of ravishing the prosecutrix even by co-accused Prabhjot Singh cannot be ignored at this stage and it can also be stated that even if he had not personally ravished the victim, there was certainly facilitation on his part to do so as he had actively participated in the kidnapping of the victim by the co-accused. Keeping in view all these facts and circumstances into consideration and further in view of the serious nature of the offences as alleged to have been committed by the petitioner, the period of sentence which the conviction may entail and attendant facts and circumstance, I am of the considered opinion,

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that the petition does not deserve to be allowed. Hence the petition is dismissed

9. It is made clear that the observations made hereinabove are only for the purpose of deciding the present petition and the same shall not be construed as an expression of opinion on the merits of the case.

27.02.2024

Waseem Ansari

(MANISHA BATRA)
JUDGE

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