

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

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CRM-M No.48807 of 2023
Date of decision: 01.03.2024

Prem Singh ... Petitioner

Vs.

State of Haryana ... Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Abhimanu, Advocate,
for the petitioner.

Mr. Arjun Lakhanpal, Addl. AG, Haryana.

MANISHA BATRA, J.

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

FIR No.	Dated	Police Station	Sections
126	21.09.2021	Women Central, District Faridabad	376 of IPC

2. Brief facts of the case relevant for the purpose of disposal of the present petition are that the aforementioned FIR was registered on 21.09.2021 on the basis of statement recorded by the complainant “AS” (name withheld) alleging therein that the prosecutrix “AJ” (name withheld) who was her daughter aged 28 years and was not of sound

mind, occasionally used to leave their house. Due to her mental condition, they had inscribed their phone number on her palm so that if she was lost then, on seeing the phone number on her palm, her family could be contacted. She alleged that in the morning of 08.09.2021, the victim had gone out of the house to dispose of garbage but did not return back. On 14.09.2021, she had lodged a complaint regarding missing of her daughter at Police Station Kalinanda Kuda. Then she came to know that the police of Faridabad had found her while roaming in the street while begging and noticing the phone number on her palm, contacted her and thereafter they had gone to the Police Station, Women Central, Faridabad wherein she had made inquiries from her daughter who told her that a person named Prem Raj, hailing from Mathura, Agra had done wrong act with her. Her medical examination was also got conducted. The petitioner was arrested on 22.09.2021. He was also medically examined. He was identified by the prosecutrix as person who had committed rape upon her. During the course of investigation, the psychiatric examination of the prosecutrix was got conducted at PGIMS, Rohtak by a board of doctors and her IQ was found to be low and she was not found fit for making statement and as such she was declared unfit for recording statement, therefore, she was ordered to be discharged by the Court as a witness. The statement of her mother had already been recorded. The petitioner is facing trial for commission of offence punishable under Section 376 of IPC. He had moved an application for grant of bail before the learned trial Court which was dismissed vide

order dated 16.09.2023.

3. 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. The prosecutrix who was the most material witness of the case has not been examined and cannot be examined because of her not being mentally fit to record statement. There are several inconsistencies and improbabilities in the prosecution version which are quite unnatural. No test identification parade of the petitioner was got conducted and it has been wrongly alleged that he was identified by the victim as the person who had committed rape upon her.

4. Learned counsel for the petitioner has further argued that as per the prosecution version, rape had been committed by the petitioner upon the prosecutrix at about 9 AM under the flyover between Ajrona and old Faridabad near a pillar under Metro Rail Line, but it was highly improbable because during the morning time, people used to passover such like places and there could be no probability of crime like rape having been committed in that area. It is also argued that the testimony of the mother of the prosecutrix is also not reliable as she has made inconsistent statements. As per her version, the petitioner had been apprehended on 14.09.2021 itself whereas the prosecution version is that he was apprehended on 22.09.2021. The victim stayed in the hospital from 14.09.2021 till 16.09.2021, the mother of the prosecutrix admitted that she remained with her daughter in B.K. Hospital, Faridabad for two days. As such, how the petitioner was identified by the victim has not

been explained at all. The petitioner had been falsely roped in this case. The victim did not know the name of the accused and no test identification of the petitioner was got conducted to show that he was identified by the prosecutrix. Rather in the medico legal report, the alleged history of sexual assault upon the victim by two persons on 18.09.2021 and 19.09.2021 had been given. Though no investigation whatsoever had been conducted with regard to the victim being ravished by any person other than the petitioner also. With these broad arguments, it is submitted that the allegations against the petitioner are false. He is in custody for a period of over two and half years. The trial is likely to take time. It is further argued that no human semen was detected on the clothing of the prosecutrix so as to connect the petitioner with the subject crime. The trial is likely to take time. Therefore, it is argued that the petitioner deserves to be given concession of bail.

5. The respondent-State, on the other hand, has filed status report as per which, there were serious allegations against the petitioner. The victim had informed that it was a person named Prem Raj who hailed from Mathura Agra and who had done wrong act with her. The medical evidence showed that the possibility of the victim being subjected to sexual intercourse could not be ruled out. Merely because of the fact that no semen could be detected on the person of the prosecutrix was not a ground to exonerate the petitioner. Therefore, it is argued that the petition does not deserve to be allowed.

6. I have heard learned counsel for the petitioner as well as

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learned State counsel at considerable length and have gone through the record carefully.

7. As per the allegations, the daughter of the complainant who was not of normal intellect and was mentally not stable had gone missing from her house on 08.09.2021 and it was on 14.09.2021, that information was received by the complainant regarding her presence in Faridabad. As per the allegations, the victim was got admitted in hospital by the police and when she met her mother, she had disclosed that the petitioner had committed rape upon her and it was on her demarcation that the police had gone under a flyover from where the petitioner was arrested on 14.09.2021. The statement of the PW-5 so made, however, appears to be inconsistent to the version of the prosecution as per which, it was only on 22.09.2021 that the petitioner had been arrested and was identified by the prosecutrix as her ravisher. The forensic evidence does not connect the petitioner with the subject crime. On an overall perusal of statement of the mother of the prosecutrix, it clearly appears that when she had met her daughter, the police already knew that wrong act had been committed with her. She stated that it was the version of the police that the victim was recovered from the same place wherein wrong act was committed against her. However, this fact stands contradicted by the statement of PW-5 herself as in the later part of her cross-examination, she is shown to have stated that a person aged about 60-70 years had informed the police about the whereabouts of Prem Singh i.e. the present petitioner and also informed her that he had tried to stop the petitioner from committing rape

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upon the prosecutrix but to no avail. She admitted that the victim did not know the name of the accused. It is evident from the statement of the prosecutrix that she was neither an eye witness to the factum of her daughter being ravished at the hands of the petitioner nor any other eye-witness to the occurrence has been cited by the investigating agency. The forensic evidence also does not connect the petitioner with the subject crime. He is in custody since 22.09.2021 i.e. a period of more than two and half years. The trial is likely to take time. There is no question of the petitioner’s intimidating the witnesses as the victim has already been observed to be declared to be unfit to record statement and the testimony of her mother stands recorded. Official witnesses are to be examined now. Keeping in view the facts and circumstances as narrated above, I am of the considered opinion that the petitioner deserves to be given benefit of bail at this stage. Hence, the petition is allowed and the petitioner is ordered to be admitted to bail subject to his furnishing personal as well as surety bonds to the satisfaction of learned trial Court.

8. It is clarified that observations made hereinabove shall not be construed as an expression of opinion on the merits of the case.

01.03.2024

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(MANISHA BATRA)

JUDGE

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