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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

214

CRM-M-47512-2024

Date of decision: 28th November, 2024

Ashish

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Khushwant Saharan, Advocate for the petitioner.

Mr. Neeraj Poswal, AAG, Haryana.

MANISHA BATRA, J (ORAL):-

The present one is the third petition for grant of regular bail as filed by the petitioner in case arising out of FIR No. 22 dated 21.01.2020 registered under Sections 4, 17 of Protection of Children from Sexual Offences Act, 2012 (for short 'POCSO Act'), Section 120-B, 34, 341, 354-C, 376 and 506 of IPC, 1860 and Section 67(b) of Information Technology Act at Police Station I.M.T., Rohtak, District Rohtak. His first petition bearing No. CRM-M-32118-2020 was dismissed as withdrawn vide order dated 07.04.2022, whereas second petition bearing No. CRM-M-39262-2023 was dismissed vide order dated 28.02.2024.

2. The petitioner has been booked under and has been facing trial



for commission of offences under aforementioned Sections, on the allegations that he had clicked photographs and made objectionable videos of the prosecutrix, who is daughter of the complainant 'K' (name withheld), while she was taking bath. Thereafter, the petitioner in connivance with his sister-in-law Priyanka had started extending threats to make her videos viral, if she did not abide by him and on this pretext, he had committed rape upon her and had further made more objectionable videos by blackmailing her. He was arrested on 21.01.2020. The operative part of the order dated 28.02.2024 passed in CRM-M-39262-2023 reads as under:-

7. *The petitioner is alleged to have committed the offence punishable under Section 354-C of IPC, i.e. voyeurism by capturing the images/videos of the victim, while she was engaged in a private act i.e. bathing in her house, in circumstance, where she would have expectation of not being observed by any person and is further alleged to have taken advantage of those images/videos and blackmailed the victim. He is also alleged to have wrongfully restrained the victim and then committed the aggravated penetrative sexual assault upon her. There are serious allegations against the petitioner. In her statement recorded under Section 164 Cr.P.C., the victim, who was only 15 years' old girl at that time, is shown to have reiterated the allegations as levelled in the FIR. Annexure P-3 is the copy of the statement of the victim as recorded before trial Court as on 30.09.2021 by way of examination-in-chief and a perusal of the same also reveals that the victim was ravished by the petitioner while his sister-in-law had forcibly*



taken her in the room of their house and co-accused Sumit and Deepak videographed the incident. Accused Deepak and Sumit have been extended benefit of bail by co-ordinate Benches of this Court but the allegations against them cannot be treated at par with the allegations as levelled against the petitioner. It will also not be out of place to mention here that the complainant had filed an application under Section 319 Cr.P.C. before the trial Court for summoning the sister-in-law of the petitioner as additional accused, which had been dismissed but vide separate order of the even date as passed by this Court, the revision petition filed against the said order has been allowed and she is ordered to be summoned as an additional accused. Keeping in view the gravity of allegations as levelled against the petitioner, the acts as attributed to him, the quantum of sentence which the conviction may entail and the attendant facts and circumstances of the case, I am of the considered opinion that the petition does not deserve to be allowed. Hence, the same is dismissed.”

3. The instant petition has been filed by the petitioner by submitting that there is a material change in the circumstances since the victim stands cross-examined before the learned trial Court now and there are several discrepancies/infirmity in her statement, which have rendered her version doubtful. It is argued that the previous petition as filed by the petitioner had been dismissed nine months back and the extended period of his incarceration has also entitled him to seek benefit of bail.

4. Status report has been filed by respondent-State. Learned State counsel has argued that the allegations against the petitioner are quite serious



in nature. His previous petition seeking bail had been dismissed after taking into consideration all the points which have been taken in this petition. Prosecutrix had been examined in-chief at that time. No substantive change in the circumstances has been pointed out by learned counsel for the petitioner. Mere extended period of incarceration is not sufficient to extend benefit of bail to him. Therefore, it is argued that the petition does not deserve to be allowed.

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

6. The present petition has been filed by the petitioner within a period of nine months after passing of order dated 28.02.2024, whereby the prayer for grant of bail as made by him had been denied. The petitioner has placed on record copy of statement of the prosecutrix as recorded before the learned trial Court. He has pointed out some inconsistencies. However, these inconsistencies cannot be taken into consideration at this stage and the evidence led by the prosecutrix has to be evaluated and assessed by the learned trial Court at the appropriate time and not by this Court. The victim otherwise is shown to have supported the prosecution version. It is well settled proposition of law that when successive bail applications come before the Court, the Court should be very cautious while considering the same. Successive bail applications can be entertained by the Court when



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some substantial change is established by the accused thereby making him entitled for grant of bail. Reference in this regard can be made to *State of Maharashtra Vs. Captain Buddhikota Subha Rao, AIR 1989 Supreme Court, 2292*, wherein it was observed so and it was further held that the Court should not pass an order of release of an accused on bail in successive bail application merely establishing some cosmetic change between time gap of two applications. There must be some drastic change during the period between two applications. Reference can also be made to *Kalyan Chandra Sarkar Vs. Rajesh Ranjan @ Pappu Yadav and another (2004) 7 SCC 528*, wherein it was observed by Hon'ble Supreme Court that where the offence alleged against an accused is grave, bail cannot be granted only on the ground of long incarceration.

7. After hearing the contentions as raised by learned counsel for the petitioner, I am of the considered opinion that no substantial or drastic change from the date of dismissal of the previous petition as moved by the petitioner has been pointed out or made out from the pleas taken by the petitioner. Merely the extended/prolonged period of incarceration or examination of some material witnesses is not a ground to extend any such benefit. The trial is also going on at a good pace and there is nothing to show that there would be any undue delay in conclusion of the same. Keeping in view the aforesaid facts and circumstances, in my considered opinion, it is not a fit case to enlarge the petitioner on bail, especially in view of the fact that no



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drastic or material change in the circumstances has been made out. In view of the discussion as made above, but without meaning to make any comment on the merits of the case, I am of the considered opinion that the petition does not deserve to be allowed. Hence, the same is dismissed.

[MANISHA BATRA]
JUDGE

28th November, 2024
Parveen Sharma

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| 1. Whether speaking/ reasoned | : | Yes / No |
| 2. Whether reportable | : | Yes / No |