

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

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CRM-M No.51788 of 2023
Date of decision: 24.01.2024

Kuldeep alias Dholia ... Petitioner
Vs.
The State of Haryana ... Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Abhinav Aggarwal, Advocate,
for the petitioner (Through Video Conferencing)

Mr. Neeraj Poswal, AAG, Haryana.

MANISHA BATRA, J.

1. The present petition has been filed under Section 439 of Cr.P.C. for grant of regular bail to the petitioner in case bearing FIR No.0320 dated 28.05.2023 registered under Section 6 of Protection of Children from Sexual Offences Act, 2012 (For short “POCSO Act”) and Sections 376 (2) (n) and 506 of IPC (Section 450 of IPC added later on) at Police Station Bhiwani Sadar, District Bhiwani, Haryana.

2. Brief facts relevant for the purpose of disposal of this petition are that on 28.05.2023, on receipt of a telephonic information regarding admission of the victim “K” (name withheld) in PGI, Rohtak as a case of sexual assault, a police party headed by HC Suman reached at PGI, Rohtak and sought information of the doctor regarding condition of the victim. As the victim was not opined to be fit to make statement, therefore, the statement of her mother i.e. complainant “B” (name withheld) was recorded who disclosed that the health of the victim “K”

who is her seventeen and half years old daughter had started deteriorating from sometime and on making inquiries from her, she came to know that she had not received her menstruation from the last three months and also disclosed that the petitioner who is real nephew of the complainant had done some wrong with her and had threatened her with dire consequences. She further disclosed about getting her admitted in PGIMS, Rohtak. On the basis of her statement and after registration of FIR, investigation proceedings were initiated. The victim died on the same day. The present petition was arrested on 29.05.2023. After completion of necessary investigation and usual formalities, challan was presented against him and presently, he is facing trial for commission of aforementioned offences.

3. The present petition has been filed by the petitioner and it is argued by his counsel that he has been falsely implicated in this case. Infact the victim had been admitted in General Hospital, Bhiwani on 20.05.2023 and remained admitted there till 24.05.2023 due to some respiratory and cardiac problem and on 24.05.2023, was referred to PGIMS, Rohtak for cardiologist opinion and was thereafter admitted therein. The complainant had demanded money from the father of the petitioner for the treatment of the victim as on 26.05.2023, the victim had started suffering from some respiratory body-wide infection leading to dangerously low blood pressure. It was on account of denial on the part of the father of the petitioner, that the complainant had threatened him to face dire consequences and thereafter had involved him falsely in this case on 28.05.2023. He has argued that infact the victim was got

discharged from PGIMS, Rohtak against medical advice on 28.05.2023 and was again admitted to General Hospital, Bhiwani on the same day wherein she had died. He has argued that there was no evidence of her being subjected to rape. Her pregnancy test was found to be negative and it was only on account of suffering from acute respiratory distress syndrome that her death had occurred.

4. It is further argued that the petitioner is in custody since long. The complainant has since been examined. There are no chances of his intimidating the witnesses. He is in custody since 29.05.2023. The scientific evidence does not support the case of the prosecution. Trial is likely to take time. Therefore, he argued that the petitioner deserves to be given concession of bail.

5. Status report has been filed by the respondent-State as per which, the petitioner had suffered disclosure statement admitting his involvement in commission of offence of rape upon the prosecutrix. Allegations against him are serious in nature. Most of the witnesses have since been examined and only two witnesses remain to be examined. It is further argued that keeping in view the gravity of the allegations as levelled against him, the petitioner does not deserve to be given concession of bail.

6. I have heard learned counsel for the parties and have gone through the record carefully.

7. As per the allegations levelled in the FIR, on 28.05.2023 on receipt of information regarding admission of the victim in PGIMS, Rohtak with the history of having been subjected to rape, a police party

had reached there but as the victim was opined to be unfit to make statement, therefore, the statement of her mother had been recorded. As already mentioned above, the victim had died on 28.05.2023 itself. On a collective perusal of the allegations as levelled in the FIR and the statement of the complainant as recorded on oath before the Court, it however appears that there are several improvements and inconsistencies with regard to the fact as to when the victim had disclosed about her being ravished at the hands of the petitioner. As per the FIR, since the victim had becoming unwell day by day and on asking had disclosed that she was not having her menstruation from the last three months, she had taken her to PGIMS, Rohtak and got her admitted there. She also alleged that on her insistence, the victim had also disclosed that the accused had repeatedly ravished her while extending threat to kill her if she disclosed about this fact to anybody. However, a cursory perusal of the statement recorded by her in the Court reveals that it was in the month of January 2023 that she had felt the victim to be pregnant and then had taken her to General Hospital, Bhiwani wherein the victim had disclosed about her pregnancy and about the fact that it was the present petitioner who had subjected her to rape. As such, it is a debatable question as to whether the fact that the victim had disclosed about her being ravished by the petitioner to the complainant in the month of January 2023 or in the month of May 2023 as mentioned in the FIR. Neither in the FIR nor in her sworn deposition, the complainant stated that the victim had infact remained admitted in General Hospital, Bhiwani from 20.05.2023 to 24.05.2023 but from a perusal of Annexure P-3 which is copy of report

given by doctors of Department of Respiratory Medicine, PGIMS, Rohtak, the victim had remained admitted in General Hospital, Bhiwani from 20.05.2023 to 24.05.2023 and had been referred to PGIMS, Rohtak for Cardiologist opinion, 2D Echo and gastroenterologist opinion and was brought there only on 26.05.2023. If the version as given in the FIR that the victim was got admitted in hospital after she had disclosed that she was not having menstruation and that the accused had committed rape upon her, then it appears to be quite improbable and unnatural that during the period from 20.05.2023 till 28.05.2023 also, the complainant did not lodge any complaint as against the petitioner and such complaint was lodged only on 28.05.2023 i.e. the day when the victim had died. The material placed on record reveals that she was diagnosed with acute respiratory distress syndrome with septic shock and was found to be unfit to make any statement on 28.05.2023.

8. The medical evidence produced on record also shows that she was not found to be pregnant at all. Though PW-5 Dr. Maansi who had conducted her medico legal examination on 28.05.2023 deposed that the possibility of the victim being subjected to sexual intercourse could not be ruled out as she was found with old ruptured hymen, however, from the same, no conclusive inference as to her being ravished can be drawn. Even PW-10 Dr. Poonam who was posted at PGIMS, Rohtak on 27.05.2023 deposed that at the time of admission, no history of assault or rape was given and subsequently, she stated that it was only after 5-6 hours of her admission that the mother of the victim had given history of rape three months back but the pregnancy test was found to be negative.

Neither in the FIR nor in the statement recorded by the complainant, it is mentioned as to on which particular date(s), month(s) and year, rape had been committed upon the victim by the present petitioner. The plea taken by the petitioner and the argument raised by his counsel to the effect that he had been falsely implicated as father had refused to provide any financial assistance to the complainant for treatment of the victim though she had asked for it appears to be having force as during her cross-examination, the complainant is shown to have admitted that she had made request to father of the petitioner to give a sum of Rs.10,000/- for treatment of victim but he had refused. Keeping in view the discussion as made above, the period of incarceration of the petitioner, the fact that the trial is likely to take time and the attendant facts and circumstances of the case but without meaning to make any comment on the merits of the case, I am of the considered opinion that the petitioner deserves to be released on 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.

24.01.2024

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(MANISHA BATRA)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No