

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

221

CRM-M-51771-2023 (O&M)
Date of decision: 25.01.2024

Aman Gupta

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Balwinder Sangwan, Advocate
for the petitioner.

Mr. Neeraj Poswal, AAG, Haryana.

MANISHA BATRA, J. (Oral)

1. This petition has been filed by the petitioner under Section 439 Cr.P.C. for grant of regular bail in case bearing FIR No. 38 dated 09.03.2023, registered under Sections 4 and 8 of the POCSO Act, 2012 at Police Station Women NIT, Faridabad.
2. Brief facts of the case relevant for the purpose of disposal of this petition are that the aforementioned FIR was registered on the basis of a written complaint submitted by complainant/victim 'K' (*name withheld*) alleging therein that the petitioner was living in the street next to her house and she had met him 3/4 months back on the occasion of a *Jagran*, which took place in the street of the petitioner. They had exchanged their cell phone

Neutral Citation No.2024:PHHC:010955

numbers and had started having conversation with each other. About 1 ½ month back, the petitioner told her to come to his house by saying that he would be alone on that day and they would have conversation with each other. On his asking, she went to his house at about 11:00 AM. The petitioner, while talking to her, firstly hugged her; kissed her and then while saying that he would perform marriage with her, forcibly committed rape upon her by taking off her clothes. She alleged that she mustered courage and disclosed about the incident to her family only 3/4 days back. After registration of the FIR, investigation proceedings were initiated. The victim was medico-legally examined. Her statement under Section 164 Cr.P.C. was recorded, wherein she reiterated the allegations. The petitioner was arrested on 14.03.2023. After completion of investigation and usual formalities, challan was presented in the Court and presently, the petitioner is facing trial for the aforementioned offences. He had moved an application for grant of regular bail before the trial Court but the same was dismissed, vide order dated 23.08.2023.

3. It has been argued by learned counsel for the petitioner that he has been falsely implicated in this case. In fact, it was the victim, who was pressuring the petitioner to perform marriage with her and on his saying that she was a minor and their marriage could not be solemnized, she had involved him falsely. He has argued that no specific date or month of the occurrence had been mentioned in the complaint. In her statement recorded before the Child Welfare Committee (CWC), she herself had stated that since the petitioner had stopped talking to her for 3/4 days, she had even approached a *Maulana* on Instagram and had online transferred an amount of Rs.17,000/- by asking him to bewitch the petitioner and as the said *Maulana* had asked for

Neutral Citation No.2024:PHHC:010955

more money and otherwise had threatened that the petitioner would die that she had disclosed about the incident to her father and further that she wanted to perform marriage with the petitioner. He submitted that the medical report showed that there was neither any evidence of intercourse nor any sexual abuse. No injury was found on the person of the victim and simply because, it was opined that possibility of sexual abuse could not be ruled out, it cannot be stated that the petitioner had subjected the victim to rape. He has further argued that the victim and his family are habitual of entrapping innocent people by lodging FIRs against them. In this regard, he has drawn attention of this Court to Annexure P-9, which is a copy of FIR No. 661 dated 11.11.2021, registered under Section 506 of IPC and Section 8 of POCSO Act, 2012 at Police Station Mujesar, Faridabad, showing that the victim had lodged a complaint against one Joginder @ Kallu by making allegations that he had molested her. It is also submitted that the petitioner is in custody since long. The trial is likely to take some time. No useful purpose would be served by keeping him in custody anymore. It is, therefore, argued that the petitioner deserves to be given benefit of regular bail.

4. Learned State counsel has resisted the petition by arguing that the medical examination report of the victim had revealed that the possibility of the victim having been subjected to sexual intercourse cannot be ruled out. The petitioner had ravished a minor girl. The allegations against him are serious in nature. Therefore, he has argued that the present petition is liable to be dismissed.

5. I have heard learned counsel for the parties and have also perused the material placed on record.

Neutral Citation No.2024:PHHC:010955

6. The petitioner is alleged to have ravished the victim 1 ½ month prior to lodging of the FIR. Though as per the medical report, there was no evidence of sexual intercourse and no injuries were found on the person of the victim but this fact cannot be ignored at this stage that the medical examination of the victim was conducted after a gap of 1 ½ month of the occurrence. The victim is yet to be examined. The allegations against the petitioner are serious in nature. The possibility of the petitioner’s intimidating the victim and other witnesses cannot be ruled out. Even while assuming that it was the victim, who was interested in the petitioner and was exerting pressure upon him to perform marriage with her and had consensual physical relations with him but keeping in view the fact that she was a minor, being aged about 15 years at that time, this consent cannot be said to be having any value. Then with regard to lodging of another FIR No. 661 on the complaint of the prosecutrix in the year 2021, there is nothing on record to show the fate of the same at this stage so as to draw any adverse inference as against the prosecutrix. In view of the discussion as made above, I am of the considered opinion that the petitioner does not deserve to be given benefit of regular bail at this stage. Accordingly, the present petition stands dismissed.

7. 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.

25.01.2024

Waseem Ansari

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes