

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

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CRM-M-54213-2023 (O&M)
Date of decision: 31.01.2024

Mannat ...Petitioner

Versus

State of Haryana ...Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Nitin Thatai, Advocate
for the petitioner.

Mr. Neeraj Poswal, AAG, Haryana.

MANISHA BATRA, J. (Oral)

1. The present petition has been filed under Section 439 of Cr.P.C. by the petitioner seeking grant of regular bail in case FIR No. 410 dated 25.12.2022, registered under Sections 6, 17 and 21 of the POCSO Act, 2012 at Police Station Barara, Ambala.
2. Brief facts of the case relevant for the purpose of disposal of the present case are that the aforementioned FIR was registered on the basis of a statement recorded by the complainant ‘S’ (*name withheld*) alleging therein that his minor daughter ‘K’ (*name withheld*), who was studying in 12th Class in a local govt. School, had gone to her school on 24.12.2022, when her close friend Sunita, after engaging her in some conversation, took her to a room outside the school at about 01:30 PM, where the present petitioner along with co-accused ‘P’ (juvenile in conflict with law), Ankush and Sahil was already present. They started misbehaving with the victim and then all of them committed rape upon her. On hearing rescue alarm raised by the victim, paternal aunt (*Chachi*) of co-accused ‘P’ reached there. On seeing

her, all of them had fled away. He alleged that previously also, co-accused 'P' used to harass the victim and in this regard, their teacher Jasbir had also been intimidated but no action was taken by him. Even on the day of occurrence, the said teacher had allowed the petitioner and co-accused to go from his class. Initially a case under Section 6 read with Sections 17 and 21 of the POCSO Act was registered. Investigation proceedings were initiated. The statement of the victim was recorded under Section 164 Cr.P.C., wherein she stated that it was 'P' (juvenile in conflict with law), who had committed rape upon her, whereas co-accused Sunita had gone away after taking her into the said room and the present petitioner and co-accused Ankush and Sahil had bolted the room from outside. The victim was medico-legally examined. Co-accused 'P' was found to be a juvenile. He was produced before the Juvenile Officer and was medico-legally examined.

3. As per allegations, during the course of further investigation, the present petitioner and co-accused Sahil, Ankush, Sunita, Jasbir Singh and Sangam Datta were found to be innocent and were not arrested and challaned. Offences under Sections 6, 17 and 21 of the POCSO Act were deleted and offence under Section 4 of the POCSO Act was added. However, on filing of another complaint by the victim on 13.03.2023, the matter was again investigated. The victim recorded a supplementary statement alleging therein that while co-accused 'P' (juvenile in conflict with law) was committing rape upon her, at that time, co-accused Ankush, Sahil and present petitioner were keeping a vigil by staying on the roof of the room, wherein she was being ravished. On the basis of her statement, offence under Section 17 of the POCSO Act was added. The petitioner and co-accused Ankur and Sahil were joined in investigation and were arrested.

After completion of necessary investigation and usual formalities, challan under Section 173 Cr.P.C. was presented in Court for trial of the petitioner and other co-accused and presently, the petitioner is facing trial for commission of aforementioned offence. He had moved an application for grant of regular bail before the Additional Sessions Judge (Fast Track Special Court for the Offences under POCSO Act), Ambala but the same was dismissed, vide order dated 05.10.2023.

4. The present petition has been filed by the petitioner on the grounds and it has been argued by his counsel that the petitioner has been falsely implicated in this case. He did not commit any offence of rape upon the victim. He was not present at the time of occurrence. In fact, the victim was having friendly relations with aforesaid 'P' from the last 3/4 years, which fact was known to every student of their class. She had willfully gone to the house of juvenile 'P' with her friend and when she was caught by the aunt of juvenile 'P', she had concocted a false story and had also involved him and other co-accused. It is submitted that after conducting thorough investigation, the police authorities previously had even found him to be innocent and he was not arrested and challaned and it was only on the statement subsequently recorded by the victim, that too after 2 ½ months, that he had been involved in this case. There was nothing on record to show that he had abetted the commission of offence of penetrative sexual assault/rape by the juvenile 'P' upon the victim. Learned counsel for the petitioner has also drawn attention of this Court to Annexure P-8, which is copy of statement of PW-3 ASI Ram Saran as recorded before the trial Court, and has submitted that this witness during his cross-examination had stated that the room, where the victim had been ravished, had been shown to

him by herself and in the another adjoining room, all the accused were present. He has also submitted that it shows that the story that petitioner and co-accused kept vigil from the roof of room, was false. He is custody since 13.03.2023. There is delay of 01 day in lodging of FIR, which has not been explained. The trial is likely to take time. There are no chances of his absconding as he has a permanent abode. He is a young person and his entire future is at stake. Therefore, it is argued that the petitioner deserves to be given benefit of regular bail at this stage.

4. Status report has been filed by the respondent-State. Learned State counsel has vehemently argued that the petitioner along with co-accused is alleged to have abetted the offence of penetrative sexual assault upon the victim as on 24.12.2022. He along with co-accused had intentionally aided the commission of subject offence as he along with co-accused stayed as guard and kept vigil outside the room, wherein the victim was being ravished by juvenile 'P'. The victim in her sworn deposition has supported the prosecution version. The allegations against the petitioner are serious in nature. There are chances of his intimidating the witnesses, if extended benefit of bail. Therefore, it is argued that the petitioner does not deserve to be released on bail.

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

6. The petitioner, along with co-accused Ankush and Sahil, is alleged to have intentionally aided co-accused 'P' (juvenile in conflict with law) in the act of commission of penetrative sexual assault by him upon the victim and is also alleged to have abetted the offence of penetrative sexual assault, which is punishable with the same punishment as is provided for

commission of the main offence. There are serious and specific allegations against him. In her statement recorded under Section 164 Cr.P.C. (Annexure P-4), the victim is shown to have stated that the present petitioner along with co-accused Ankush and Sahil had dragged her into a room, wherein accused ‘P’ was already present and then they bolted the room from outside and ‘P’ had committed rape upon her. Even in her sworn deposition (Annexure P-2), she is shown to have deposed that when she was taken by Sunita to the house of ‘P’, the present petitioner and co-accused Ankush and Sahil were already present there and that the petitioner and Ankush had gone to the roof of the house, obviously to keep vigil, whereas ‘P’ after forcibly taking her inside the room had ravished her. There might be minor inconsistencies in the statement of the victim as recorded under Section 164 Cr.P.C. as well as the statement recorded before the Court but those are to be considered by the trial Court at the time of final disposal of the case and not at this stage. There is nothing on record to show that there would be any undue delay in conclusion of trial. Rather, the same is going at a proper pace. Keeping in view the gravity of offences alleged to have been committed by the petitioner, the quantum of sentence which the conviction may entail and the attendant facts and circumstances, but without meaning to make any comment on the merits of the case, this Court is of the considered view that the petitioner does not deserve to be given concession of regular bail. Hence, the petition stands dismissed.

31.01.2024

Waseem Ansari

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned

Yes

Whether reportable

Yes