

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

281

CRM-M No.55864 of 2023
Date of Decision: 30.04.2024

Makhinder ... Petitioner

Versus

State of Haryana and others ... Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Ankit Aggarwal, Advocate,
for the petitioner.

Mr. Neeraj Poswal, AAG, Haryana,
for the respondent-State.

None for respondent No.2.

Mr. Anil Dutt, Advocate,
for respondent No.3.

MANISHA BATRA, J.(Oral)

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

FIR No.	Police Station	Sections
767	Indri, District Karnal	6 of Protection of Children from Sexual Offences Act, 2012 (For short “POCSO Act”) and 363, 366A, 450 and 506 of IPC

2. Brief facts relevant for the purpose of disposal of the present petition are that the aforementioned FIR was registered on 25.09.2022 initially under Sections 363 and 366A of IPC on the basis of complaint lodged by complainant “S” (name withheld), father of the victim “L”

Neutral Citation No.2024:PHHC:059497

(name withheld) alleging therein that about 2-3 days back, the petitioner had gone to the college wherein the victim was studying with an intention to kidnap her but could not succeed as his daughter was rescued by his nephew. However, she had been enticed away by the petitioner on 25.09.2022 and, therefore, he prayed for taking action against him. After registration of FIR, investigation proceedings were initiated. The victim was recovered from the custody of the petitioner on 25.10.2022. She recorded a statement under Section 164 of Cr.P.C. to the effect that she had left her house at her own on 25.09.2022 as her father wanted to perform her marriage but at the same time she expressed desire to live with her parents. The petitioner was arrested on 26.10.2022. The victim was medically examined and as per the opinion of doctor, possibility of her being subjected to sexual assault could not be ruled out. During the course of investigation, offences under Sections 6 of POCSO Act and 506 of IPC were added. Subsequently, offence under Section 366-A IPC was deleted and Sections 366 and 450 of IPC were added. Investigation has since been completed. Challan has been presented in the Court. Trial has commenced. The petitioner had moved an application for grant of regular bail before the learned trial Court which was dismissed vide order dated 18.10.2023.

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. Infact, the petitioner and the victim were in love with each other from the last few years. She had voluntarily left her house with her own free will in the year 2021 also and at that time, the complainant had lodged FIR bearing No.94 dated 20.02.2021 on the same allegations but he had been acquitted of the charges framed against him vide judgment dated 06.12.2022

Neutral Citation No.2024:PHHC:059497

(Annexure P-3).

4. It is further argued by learned counsel for the petitioner that the victim jointly with the petitioner had filed a petition bearing No.CRWP-10022-2022 specifically mentioning that she was living in live-in-relationship with the petitioner and had made prayer for seeking protection of life and liberty at the hands of the complainant and her family members. She has attained the age of majority now and has sworn affidavit (Annexure P-5) to the effect that she was forced to record statement against the petitioner and nothing wrong has been done with her. It is submitted that the sworn deposition of the victim was recorded under the pressure of her parents. The petitioner is in custody for a period of more than one and half years. The trial is likely to take time. The petitioner himself is a young boy only of 23 years of age. His entire life and career would be ruined if the relief claimed by him is not granted. Therefore, it is argued that he deserves to be given concession of bail.

5. Status report has been filed by the respondent-State, as per which, the victim was minor at the time of occurrence i.e. on 25.09.2022 when she had been enticed away by the petitioner. Her secondary examination certificate proved her date of birth to be 21.09.2005. Learned State counsel has argued that though in her statement recorded under Section 164 of Cr.P.C., the victim had stated that she had left her house with her own will without informing anybody, however, she was recovered from the possession of the petitioner. Her medico legal examination report reveal that possibility of her being subjected to sexual assault could not be ruled out. At the time of occurrence, she was a minor and, therefore, her consent was immaterial. The allegations against the petitioner are serious in nature. There

Neutral Citation No.2024:PHHC:059497

are chances of his absconding if extended benefit of bail. The acquittal of the petitioner in previous FIR lodged by the father of the prosecutrix had no bearing for the purpose of this case and, therefore, it is argued by him that the petition does not deserve to be allowed.

6. It will not be out of place to mention here that the respondent No.2 i.e. the complainant who is father of the victim was duly served with notice of this petition but did not choose to appear whereas the victim i.e. respondent No.3 is assisted by her counsel who submitted during the course of arguments that the victim who is major now wants to perform marriage with the petitioner and she has no objection if the petitioner is extended benefit of bail and even the FIR of this case is quashed. It is also submitted by him that the affidavit Annexure P-5 has been sworn by the victim. He further argued that sworn statement of the victim was recorded on 18.08.2023 under the pressure of her parents and, therefore, the same had no value.

7. I have heard learned counsel for the petitioner, learned State counsel as well as learned counsel for respondent No.3-victim at considerable length and have gone through the record.

8. As per the allegations, the victim who was a minor girl aged 17 years and 4 days, had been enticed away by the petitioner on 25.09.2022, was made to stay with him for a period of over one month and was subjected to acts of aggravated penetrative sexual assault/repeated rape upon her by the petitioner. Undoubtedly, a petition seeking protection of life and liberty had been jointly filed by the petitioner and victim immediately thereafter and order Annexure P-4 was passed by a Coordinate Bench of this Court directing the concerned authorities to pass an appropriate order on the

Neutral Citation No.2024:PHHC:059497

representation claimed to have been filed by them. The victim in her statement recorded under Section 164 Cr.P.C. stated that she had voluntarily left her house on 25.09.2022 as her father was solemnizing her marriage elsewhere. However, in her sworn deposition as recorded before the learned trial Court on 18.08.2023, she is shown to have supported the version of the prosecution by stating that the petitioner used to sexually harass her, that he had enticed away on the pretext of marrying with her on 23.09.2022, had taken her to different places and had developed physical relations with her. On perusal of statement of the victim as recorded under Section 164 Cr.P.C. as well as before the Court, I am of the considered opinion that the question that the victim was enticed away or induced by the petitioner with intent to be compelled to marry any person against her will or in being forced or seduced to illicit intercourse is a debatable question as her statements do not show that she was taken away out of the lawful guardianship of her parents by the petitioner and the petitioner had made any active participation in her leaving her parental house and, therefore, it is a matter of evidence as to whether the provisions of Sections 363 and 366 of IPC are attracted or not?

9. However, so far as the prosecution version that the victim had been subjected to aggravated penetrative sexual assault/repeated rape by the petitioner is concerned, she is alleged to have been with the petitioner for a period of over one month. Even if it is presumed for the sake of arguments that there was any consent on her part to have sexual relations with the petitioner, such consent is immaterial, she being minor. More so, her sworn deposition shows that she was repeatedly ravished by the petitioner. Learned counsel for the petitioner has placed on record a copy of judgment dated 06.12.2022 passed by learned trial Court in Sessions case bearing CIS

Neutral Citation No.2024:PHHC:059497

No.SC No.220 of 2021 titled as *State v. Makhinder Singh* showing that father of the present victim lodged an FIR bearing No.94 dated 20.02.2021 registered under Sections 323, 354A, 354-D and 506 of IPC and Section 8 of POCSO Act at Police Station Indri, Karnal as against the present petitioner previously but later on the victim as well as her father had turned hostile and the present petitioner was acquitted. However, from that, no inference as to his being not involved in the present case can be drawn at this stage. The trial is going on and there is nothing on record to show that there would be any undue delay in conclusion of the same. Keeping in view the nature of the subject offences and especially offence under Section 6 of POCSO Act, 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, I am of the considered opinion that the petition does not deserve to be allowed. Hence, the same is dismissed.

30.04.2024
manju

(MANISHA BATRA)
JUDGE

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