

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

CRM-M-55503-2023 (O&M)
Date of decision: 19.01.2024

Ravi ...Petitioner

Versus

State of Haryana ...Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Rohan Garg, Advocate
for the petitioner.

Mr. Neeraj Poswal, AAG, Haryana.

MANISHA BATRA, J. (Oral)

1. Prayer in this petition, filed by the petitioner under Section 439 Cr.P.C., is for grant of regular bail in case bearing FIR No. 26 dated 03.02.2022, registered under Section 6 of the POCSO Act, 2012 and Sections 363, 366, 376(2)(i), 376(2)(f) and 506 of the IPC at Police Station Kosli, District Rewari.
2. Brief facts of the case relevant for the purpose of disposal of this petition are that the aforementioned FIR was registered on 03.02.2022 on the basis of a written complaint filed by the complainant 'S' (*name withheld*) alleging therein that some marriage was to take place at village Jharoda, wherein her sister 'N' (*name withheld*) resided and on 26.01.2022, his sister had taken the prosecutrix, who is his 13 years' old daughter and his son along

with her. On 03.02.2022, the wife of the complainant had a conversation with the prosecutrix on phone and the latter started crying and told her mother to come to her and bring her back. When the wife of the complainant informed him about this fact, he went to village Jharoda along with his wife and brought his daughter back, who on asking informed that on 31.01.2022, she along with some other relatives had gone to attend *Lagan* ceremony at village Amoli and the petitioner, who is son-in-law of sister of the complainant, had also gone with them. They had gone in three cars. However, while coming back from village Amoli, the petitioner induced the victim to board his scooty for the purpose of taking her back to the village of her aunt but instead of taking her there, he took her to his own village, wherein he forcibly committed rape upon her and also threatened the victim not to disclose about the incident to anybody. After registration of FIR, investigation proceedings were initiated. The victim was medically examined. During the course of investigation, the offences under Section 366-A and 376(2)(n) of IPC were deleted as offences under Sections 363, 366, 376(2)(i) and 506 of IPC read with Section 6 of POCSO Act were added. The petitioner was arrested and he too was medically examined. Statement of the victim under Section 164 Cr.P.C. had also been recorded. Presently, the petitioner is facing trial for commission of the aforementioned offences.

3. The present petition has been filed by the petitioner on the grounds and it has been argued by his counsel that he has been falsely implicated in this case. There is inordinate and unexplained delay of three days in lodging of the FIR. The entire prosecution story is unnatural and

improbable since as per the version of the victim, she was made to stay at the house of the petitioner overnight on 31.01.2022 but still her parents did not make any inquiries about her having gone missing. The statements of parents of the victim had been recorded in the Court, which revealed that they have totally changed the prosecution version and had made material improvements and contradictions in their statements. The petitioner is in custody since long. The trial is likely to take time. No case for commission of offences of kidnapping and rape has been made out against him at all. There was no eye-witness to the occurrence. The petitioner had in fact been made a scapegoat on account of a dispute between the family members. No spermatozoa has been found on the vaginal swabs or the clothing of the victim. Medico-legal report of the prosecutrix does not show any evidence of sexual intercourse or finding of injuries on the person of the victim, which could be suggestive of her being subjected to any act of penetrative sexual assault. There was a delay of 07 hours in between the lodging of FIR and conducting the medico-legal examination of the victim, which stands unexplained and has made the case of prosecution highly improbable. With these broad submissions, it is argued that the petitioner deserves to be given benefit of regular bail. In support of his arguments, learned counsel for the petitioner has placed reliance upon the judgments rendered in *Gurpreet Singh vs. State of Punjab : CRM-M-37835-2020*, *Ranjit Singh @ Goldy vs. State of Punjab : 2021 (2) Law Herald 1213*, *Sanjay Kumar vs. State of Punjab : CRM-M-36005-2014*, *Ram Chander vs. State of H.P. : Cr.M.P. (M) No. 2344-2019*, *Hanamant vs. State of Karnataka : Criminal Petition No. 201069-2015*, *Balasab vs. State of*

Karnataka : 2020 (3) KCCR 2273 and Om Parkash vs. State of Haryana : Crl. Appeal No. 337 of 1996.

4. *Per contra*, learned State counsel has argued that there are serious and specific allegations against the petitioner. He, being a relative of the minor victim, who was a child of tender age of about 13 years, and being a person in a position of trust, had taken her to his house on the pretext of taking her to the village of her aunt as on 31.01.2022 and had committed aggravated penetrative sexual assault upon her. The trial is at fag end as most of the prosecution witnesses have since been examined. The victim has been subjected to rape as on the night of 31.01.2022, whereas her medico-legal examination could be conducted only on 03.02.2022, when her parents had come to know about the incident and had taken her to the hospital and as such naturally there were no chances of detection of spermatozoa on the vaginal swabs or clothing etc. of the victim by that time. Merely on the basis of absence of injuries on her body parts or non-detection of spermatozoa, which has life span of only 72 hours, the version of the prosecutrix cannot be disbelieved. Hence, it is argued that the petition is liable to be dismissed.

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

6. It has not been disputed by the petitioner, who is admittedly son-in-law of the real aunt (*Bua*) of the victim, that as on 31.01.2022, the minor victim along with other relatives and himself had gone to attend some *Lagan* ceremony to village Amoli. The petitioner, who is a near relative of the victim and a person being in a position of trust, is alleged to have made her

accompany him on his scooty instead of car, in which she had earlier come with other relatives, on the pretext of taking her back to the house of her aunt on his vehicle and by taking advantage of her tender age, is further alleged to have taken her to his own house, wherein she was not only subjected to aggravated penetrative sexual assault by the petitioner but was also criminally intimidated by him and was taken to the house of her aunt as on 01.02.2022. It is revealed from the record that since she was in her aunt's house and was in a state of shock, therefore, she could disclose about the incident to her parents only on 03.02.2022, when they took her back to their home. The allegations against the petitioner are grave in nature. The statement of the prosecutrix is yet to be recorded before the trial Court. The trial is going on at a fast pace. There is nothing on record to show that there would be any undue delay in conclusion of the same. In the cases, which have been cited by learned counsel for the petitioner, undoubtedly, the persons accused of committing offence of rape/penetrative sexual assault, were extended benefit of bail as DNA profile of seminal stains did not match with the DNA profile of the accused. However, these orders cannot be stated to be of binding nature as it is well settled law that orders of bail are not necessarily orders of any precedential value and they shall not be treated as precedent. Reliance in this context can be made upon the judgment of the Hon'ble Supreme Court in *Gajanand Agarwal v. State of Orissa and others, (2006) 12 SCC 131*. 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, 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.

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.

19.01.2024
Waseem Ansari

(MANISHA BATRA)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>