

220 IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-56579-2023
Date of decision: 6th March, 2024

Pawan Kumar

...Petitioner(s)

Versus

State of Punjab

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Priyanshu Kamra, Advocate for the petitioner.
Mr. A.S. Samra, AAG, Punjab.

MANISHA BATRA, J (ORAL):-

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
43	District Fazilka	354, 354-B of Indian Penal Code, 1860 (for short ‘IPC’) and Section 6 of Protection of Children from Sexual Offences Act, 2012 (for short ‘POCSO Act’) and charge sheeted under Sections 376 IPC and Section 6 of POCSO Act

2. Brief facts of the case relevant for the purpose of disposal of this petition are that the aforementioned FIR was registered on 03.05.2022 on the basis of statement recorded by the complainant ‘M’ (name withheld) therein that the victim ‘D’ (name withheld) who was her ten and half years old daughter and was having low intellect, had gone to attend a marriage

function on 29.04.2022, which was taking place in their neighbourhood, without informing them. Since she did not return back till 8:00 PM, therefore, she alongwith her husband had started making search for her but could not find her in the house where marriage function was taking place. Then, she was found by them in a naked condition in the bushes of boarder of neighbouring village at about 10:10 PM. She recorded that on asking, the victim had disclosed to her that the present petitioner had teased her and took her into bushes and also taken off her clothing. On the basis of her statement, initially a case under Sections 354 and 354-B of IPC read with Section 10 of POCSO Act was registered. The victim was medically examined. Her statement under Section 164 of Cr.P.C. could not be recorded due to her low IQ level. The petitioner was arrested on 11.05.2022. He was also medically examined. During investigation, offences under Section 376 of IPC and Section 6 of POCSO Act, 2012 were added. After completion of necessary investigation and usual formalities, challan under Section 173 of Cr.P.C. was presented in the Court and presently, the petitioner is facing trial for the commission of offences under Section 376 of IPC and Section 6 of POCSO Act. He had moved an application for grant of regular bail before the learned trial Court but the same was dismissed vide order dated 28.09.2023.

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. There was delay of four days in lodging of FIR which has not been

explained at all by the mother of the victim. The victim did not identify the petitioner as accused when she had entered into the witness box to record her statement. The complainant who is mother of the victim was not an eye-witness to the occurrence and even it cannot be assumed that her statement was hearsay in nature because the victim herself has not identified the petitioner as the person who has ravished her/tried to ravish her. The petitioner is in custody since 11.05.2022. The trial is likely to take time. No useful purpose would be served by keeping him in custody anymore. Since the material witnesses have already been examined, there are no chances of his intimidating the witnesses. Therefore, it is argued that the petition deserves to be allowed.

4. Status report has been filed by the respondent-State, as per which, thorough investigation is conducted in the matter and the petitioner was found to be involved in commission of the subject offences. The FSL and DNA report are yet to be awaited. The testimony of the mother of the victim who understood the gestures and language of the victim is relevant and cannot be discarded only because of the fact that she was not an eye-witness of the incident. With these arguments, it is submitted that the petition does not deserve to be allowed.

5. I have heard learned counsel for the petitioner as well as learned State counsel at considerable length and have gone through the record carefully.

6. As per the allegations levelled in the FIR, on 29.04.2022, the

present petitioner had taken the victim who is a ten and half years old child having low IQ level, behind the bushes in the neighbouring village and had ravished her. The victim when appeared into the witness box did not identify the petitioner at all and stated that she did not know any person with the name as that of the petitioner. She also did not say that anything had happened to her. As such, her testimony did not serve any purpose. So far as the testimony of the mother of the prosecutrix is concerned, copy of her statement has been placed on record by learned counsel for the petitioner as Annexure P-3 and on perusal of the same, it is revealed that she herself admitted that her daughter was mentally challenged. She had not seen the petitioner while sexually assaulting the victim. There is also delay of four days in reporting the matter to the police. Though in such like cases, the delay does not hold much importance, however, in this case, it is not made out from the testimony of the PW-2, as to how, the victim came to know that it was the petitioner who had assaulted her, rather stand taken by her qua the involvement of the petitioner appears to be *prima facie* falsified as victim herself was not able to either identify the petitioner or to say anything about the occurrence that had happened with her. The petitioner is in custody since 11.05.2022. The trial is likely to take time. Since the material witnesses have been examined, there are no chances of his intimidating the witnesses. Keeping in view, the facts and circumstances of the case as discussed above and the period of incarceration of the petitioner, I am of the considered opinion that the present petition deserves to be allowed. Hence, the petition

is allowed, the petitioner is ordered to be released on bail subject to his furnishing personal/surety bonds to the satisfaction of the Chief Judicial Magistrate/ Duty Magistrate concerned.

7. It is clarified that observations made hereinabove shall not be construed as an expression of opinion on the merits of the case.
8. Since the main petition has been allowed, pending application if any is rendered infructuous.

[MANISHA BATRA]

JUDGE

6th March, 2024

Parveen Sharma

1. Whether speaking/ reasoned

:

Yes / No
2. Whether reportable

:

Yes / No