

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-56935-2023
Date of decision: 8th February, 2024

Krishna Bai @ Krishna Rani

...Petitioner(s)

Versus

State of Punjab

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Kuldip Singh, Advocate for the petitioner.

Ms. Ruchika Sabherwal, DAG, 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.	Dated	Police Station	Sections
17	22.02.2022	Sadar Jalalabad, District Fazilka	344, 363, 366-A, 376(2)(n), 376-D and 506 of Indian Penal Code, 1860 and Sections 10, 11, 9, 6 of Prohibition of Child Marriage Act, 2006 (Section 6 of POCSO Act, 2012 added later on)

2. Brief facts of the case relevant for the purpose of disposal of this petition are that the aforementioned FIR was registered on 22.02.2022, on the basis of a written statement recorded by prosecutrix ‘P’ (name withheld) aged about 16 years alleging therein that in the month of

September, 2021, she had gone to stay in the house of her maternal aunt (massi) 'R' (name withheld) at village Sukhera, District Fazilka. The present petitioner who is wife of co-accused Fuman Singh had been residing in the neighbourhood of her aunt and they had been in visiting terms with each other. She stated that the petitioner had asked her to become her daughter-in-law and she had responded by saying that she was not of marriageable age. She further stated that after a gap of 15-20 days, the petitioner took her in white colored car on the pretext of taking her to market for shopping. The accused Gurcharan Singh who is her son, Fuman Singh was also present sitting in the same car. They had stopped the car in an abandoned place on the way, wherein, accused Gurcharan Singh forcibly took her out of the car towards an empty plot and forcibly committed rape upon her. The petitioner and her husband remained present in the car. When they came back, all three threatened her to kill her family, if she disclosed about the incident to anybody. They also told her that from then onwards she will reside with them as their daughter-in-law. She further alleged that the petitioner and co-accused Fuman Singh left the accused Gurcharan Singh at the house of his aunt Baimbu. Her maternal aunt and her son however came there while making search for her and on asking as to why, she had not reached back to their house, out of fear, she stated that now onwards she would stay with the accused Gurcharan Singh and the same fact was told to her parents. She further alleged that the accused Gurcharan Singh kept on ravishing her for a period of 10-15 days in the house of his aunt. In the month of October, 2021, he performed marriage with her in the presence of the petitioner and her

husband and then they had come back to their native village and the victim started residing with them there. She alleged that the petitioner and the co-accused used to fight with her on trivial issues and also started harassing her. In November, 2021, the petitioner had left her at bus stand, Sirsa and from where she was taken by her uncle to her parental house. She also disclosed that as she was under mental trauma and was getting treated, therefore, she could not report the matter to the police earlier. On the basis of this statement, the aforementioned FIR was registered. Investigation proceedings were initiated. During investigation, the petitioner and co-accused were arrested. After completion of necessary investigation and usual formalities, challan was presented in the Court and presently, they are facing trial for commission of offences punishable under Sections as mentioned above. The petitioner had moved an application for grant of regular bail which was not allowed by the Court of learned Additional Sessions Judge, Fast Track, Special Court (POCSO), Fazilka.

3. The present petition has been filed by the petitioner on the ground and argued by her counsel that she is in custody since 31.03.2022. There is delay of more than seven months in reporting the matter to the police. The allegations against the petitioner and the co-accused are palpably false. Even the prosecutrix, her mother and father have not supported the prosecution version while appearing as witnesses before the trial Court. They have not identified the petitioner and co-accused as the persons who had either kidnapped/abducted her or the co-accused Gurwinder Singh who had repeatedly ravished her and also the petitioner as the person who had

enticed her away and had forcibly kept her in her house and made her to perform marriage with co-accused. It is submitted that the trial is likely to take time. No useful purpose would be served by keeping the petitioner in custody anymore. Therefore, it is argued that the petition deserves to be allowed.

4. *Per contra*, learned State counsel has argued that the allegations against the petitioner are serious in nature. She in furtherance of her common intention with the co-accused had enticed away the minor prosecutrix on the pretext of taking her to market for shopping wherein the victim was ravished by the co-accused Gurcharan Singh i.e. son of the present petitioner. She was compelled to perform marriage with the accused Gurcharan Singh. As per her statement recorded under Section 164 of Cr.P.C., even the co-accused Fuman Singh had ravished her and therefore, petitioner and co-accused had rightly been facing trial for commission of offence of gang rape. With these broad submissions, it is argued that the petition does not deserve to be allowed.

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

6. As per the allegations, the prosecutrix who had gone to stay in the house of her maternal aunt when in the month of September-October, 2021, she had been enticed away by the present petitioner, who was living in her neighborhood on the pretext of taking her to the market for shopping and then, her son i.e. the co-accused Gurcharn Singh had committed rape upon the victim. The present petitioner, her husband Fuman Singh and Gurcharan

Singh had forcibly made her stay in their house by extending threats to kill her family. She was repeatedly subjected to rape by the accused Gurcharan Singh for a period 10-15 days and then in the month of October, 2021, the minor prosecutrix was compelled to perform marriage with accused Gurcharan Singh by the present petitioner and the co-accused. The petitioner had placed on record copies of the deposition as recorded by the prosecutrix before the trial Court. On a perusal of statement of PW-3 and PW-4 who are parents of the prosecutrix, it is revealed that they have totally resiled from the version as given earlier and have not supported the prosecution version at all. Both these witnesses are shown to have turned hostile and were even allowed to be cross-examined by public prosecutor. Still they maintained the same stand to the effect that neither their daughter had been kidnapped by the petitioner or anybody else, nor she was subjected to rape or any wrong act was committed with her.

7. Further, so far as, the prosecutrix herself is concerned, in her sworn deposition recorded by way of examination-in-chief, she is shown to have supported the prosecution version. However, record reveals that when she had been recalled for her further cross-examination, she too took a U-turn and stated that she did not know the accused Fuman Singh nor she had ever approached the police or had made statement that she was subjected to rape by any person. She is also shown to have stated in her statement, which was got recorded earlier by her before the Court had been tutored by one police official. It is relevant to mention here that her re-examination was sought by learned public prosecutor which was allowed by learned trial

Court and while being re-examined, she admitted that she had made a statement as against the petitioner and co-accused and in support of prosecution case but stated that she had been pressurized by police officials to record such statement, even with regard to her statement as recorded under Section 164 of Cr.P.C., the same stand had been taken by her. She categorically denied that she had been taken away by the petitioner and that the co-accused Gurcharan Singh had repeatedly ravished her; she was kept confined by them and further that she had been assaulted by either of them. She also did not depose anything about the fact that she was got married with the accused Gurcharan Singh.

8. The learned trial Court had dismissed the application as filed by the petitioner by observing that the chemical examination report was yet to come. It is however, relevant to mention here that though as per the prosecution version, the prosecutrix had returned to her home in November, 2021, but the FIR in this case was got registered only on 22.02.2022 i.e. after a gap of four months, and this delay does not stand explained by either the prosecutrix or her parents in their respective sworn depositions. Therefore, taking an overall view of the peculiar facts and circumstances of the case, the nature of the statements of the material witnesses including the prosecutrix, the period of incarceration of the present petitioner and the attendant facts and circumstances of the case, I am of the considered opinion that accordingly the petition is allowed and 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.

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

[MANISHA BATRA]
JUDGE

8th February, 2024
Parveen Sharma

1. Whether speaking/ reasoned : Yes / No
2. Whether reportable : Yes / No