222 IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH
CRM-M-57617-2023
Date of decision: 3rd April, 2024

Barkat

...Petitioner(s)

Versus

State of Haryana

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Ashish Gupta, Advocate for the petitioner.
Mr. Neeraj Poswal, AAG, Haryana.

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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.	Date	Police Station	Sections
512	26.12.2021	Ferozepur Jhirka, District Nuh	363, 366-A of Indian Penal Code, 1860 (for short 'IPC') and Sections 365, 506 read with Section 34 of IPC and Section 6 of POCSO Act, 2012 added later on and 366-A IPC has been deleted

2. Brief facts of the case relevant for the purpose of disposal of this petition are that the aforementioned FIR was registered on the basis of statement recorded by the complainant 'I' (name withheld) alleging therein that on the night of 22.12.2021, he was watering his fields, when accused Wasim son of Jamaludin along with three youths entered inside his house and tried to take away the victim 'R' (name withheld) who is his minor daughter. His wife and children had raised alarm and tried to rescue the

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victim but by assaulting the wife and minor son of the complainant, they managed to kidnap the victim. He also recorded that he had contacted the family members of the abovesaid Wasim and panchayat meetings were also convened but the family members of the Wasim refused to join the panchayat meetings and then he had come to report the matter to the police. Initially, a case under Sections 365, 366-A and 506 read with Section 34 of IPC and Section 4 of POCSO Act was registered. Investigation proceedings were initiated. During investigation, the victim was recovered on 28.12.2021. She was medically examined. Offence under Section 6 of POCSO Act was added and offence under Section 366-A of IPC was deleted. The statement of the victim under Section 164 of Cr.P.C. was recorded on 29.12.2021, wherein she took the name of the present petitioner as well as above-named Wasim and one Jaikam as the persons who had ravished her. The present petitioner was arrested on 03.09.2022. He suffered disclosure statement admitting his involvement in the subject crime and demarcated the place of occurrence where he had ravished the victim. Accused Wasim and Jaikam were found to be innocent. After completion of necessary investigation and usual formalities, challan stands presented against the present petitioner and now he is facing trial for commission of aforementioned offences. He had moved an application for grant of regular bail before the learned trial Court which had been dismissed vide order dated 09.10.2023.

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

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this case. He was not named in the FIR and had been named in this case on the basis of statement recorded by the prosecutrix under Section 164 of Cr.P.C. which was result of due deliberations. Most of the persons named as accused have been found to be innocent and this fact proves the falsity of the version of the prosecution. The victim has since been examined and there are no chances of petitioner's tampering with the evidence and intimidating the witnesses. He is in custody for a period of more than one and half year. His custodial interrogation is not required. Trial is likely to take time. No useful purpose would be served by keeping him in custody. Therefore, it is urged that the petitioner deserves to be given concession of bail.

4. Status report filed by learned State counsel is taken on record. As per the status report, victim had specifically taken the name of the present petitioner while recording her statement under Section 164 of Cr.P.C. Trial is going at a proper pace and there is nothing on record to show that there would be any undue delay in conclusion of the same. The allegations against the petitioner are serious in nature. Human semen had been detected on the clothing of the victim. DNA report is yet to be awaited. Therefore, it is urged that the petitioner does not deserve to be given concession of bail.

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 version of the prosecution, the victim had been taken away from her house by one Wasim and some other persons and had been subjected to rape. As per the further allegations, the accused Wasim(who has

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been found to be innocent) had called the present petitioner who had taken her towards some hut in a forest area and had ravished her repeatedly by keeping her confined for a period of four days. The statement of the victim has since been recorded and the copy of the same has been placed on record by learned counsel for the petitioner. A perusal of her statement reveals that the prosecutrix reiterated the same version which was given by her in her statement under Section 164 of Cr.P.C., so far as the present petitioner is concerned. Though it is argued by learned counsel for the petitioner that the since the petitioner has not been named in the FIR and the persons against whom the allegations of kidnapping/abducting the victim had been levelled are themselves found to be innocent, therefore, the prosecution version is false, however, I am not able to accept this contention at this stage as the prosecutrix has remained consistent with regard to the fact that the petitioner had ravished her by keeping her confined. As such, I am persuaded to hold that keeping in view the serious nature of the allegations as levelled against the petitioner, the statement of the victim, the quantum of sentence that the conviction may entail, but without meaning to make any opinion on the mertis of the case, the petition does not deserve to be allowed. Hence, the petition is dismissed.

7. Since the main petition has been dismissed, pending application if any is rendered infructuous.

[MANISHA BATRA]
JUDGE

3rd April, 2024
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1. Whether speaking/ reasoned : *Yes*
2. Whether reportable : *Yes*

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