

CRM-M-60040-2023 (O&M)

212 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

2024:PHHC:154249



CRM-M-60040-2023 (O&M)
DATE OF DECISION : 22.11.2024

SHAKTI ALIAS BHUPENDER ... PETITIONER

V/S

STATE OF HARYANA ... RESPONDENT

CORAM: HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN

Present: Mr. Raj Kumar Chauhan, Advocate for the petitioner.

Mr. Kirpal Singh Thakur, AAG, Haryana.

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HARPREET KAUR JEEWAN, J. (ORAL)

1. The present petition has been filed under Section 439 of the Cr.P.C. for grant of regular bail to the petitioner in case bearing FIR No. 605 dated 03.09.2021 registered under Sections 363, 366-A IPC and Section 6 of POCSO Act at Police Station Indri, District Karnal.

2. The petitioner is alleged to have allured the prosecutrix who was aged 16 years, a student of 11th class and took her to Karnal and Kaithal on a motor-cycle. He is alleged to have committed penetrative sexual assault with the prosecutrix in a hotel and next day the prosecutrix boarded a bus and came back. The accused was known to the prosecutrix as he attended the marriage of the sister of the prosecutrix with DJ team.

3. Learned counsel for the petitioner contends that the prosecutrix has alleged that her drink was having some intoxicant but medical report

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dated 05.07.2023 (Annexure P-5) does not show any drug. There is no evidence of staying in the Hotel. Learned counsel for the petitioner contends that there is more than 3 years custody. However, the trial has not yet concluded.

4. As per the custody certificate, the petitioner has undergone 03 years, 01 month and 07 days of actual custody.

5. Referring to the status report, learned State counsel submits that the prosecutrix was 16-1/2 years of age at the time of alleged occurrence. She has supported her version in her statement recorded under Section 164 Cr.P.C. (Annexure P-2). It is further contended that even DNA matched as per the report of Forensic Science Laboratory, Madhuban dated 23.07.2024.

6. I have heard learned counsel for the parties and have also gone through the paper-book.

7. Learned State counsel has informed that statement of the prosecutrix has already been recorded during the trial as PW-1 (Annexure P-3). Learned State counsel, on instructions from ASI Parvesh, submits that even the statements of parents of the victim have also been recorded.

8. No doubt the allegations against the petitioner are very serious in nature as the prosecutrix was 16-1/2 years of age. However, there is a long custody of more than 3 years. As per the State counsel, out of 14, only 3 witnesses have been examined. So far as the antecedents of the petitioner are concerned, the petitioner has already been acquitted in another FIR No. 781 dated 08.09.2016 under Sections 363, 366-A IPC registered at Police Station Sadar, District Karnal, as per the custody certificate.

9. The petitioner had already undergone incarceration for more

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than 3 years. Keeping in view the total custody period of the petitioner during trial, the fact that material private witnesses have already been examined and there is no likelihood of conclusion of the trial in the near future, petitioner is ordererd to be released on regular bail, subject to his furnishing adequate bonds and two local sureties in the sum of Rs. 5 Lakhs each to the satisfaction of the trial Court/Duty Magistrate concerned subject to the following conditions:-

(i) The petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case, so as to dissuade him to disclose such facts to the Court or to any other authority.

(ii) The petitioner shall remain present before the Court on the dates fixed for hearing of the case.

(iii) The petitioner shall not absent himself from the Court proceedings except on the prior permission of the Court concerned.

(iv) The petitioner shall surrender his passport, if any, (if already not surrendered), and in case he is not holder of the same, he shall swear an affidavit to that effect.

(v) The petitioner shall also file his affidavit before the concerned Court, mentioning his ordinary place of residence and number of mobile phone, which will be used by him during the pendency of the trial. In case of change of place of residence/mobile number, he shall share the details with the concerned Court/learned Trial Court.

(vi) In case, the petitioner involves in any other criminal activity, during the pendency of the trial, it shall be viewed

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seriously and the prosecution shall be at liberty to move a petition for cancellation of bail granted to him.

(vii) The concerned Court may also impose any other condition, in accordance with law, while accepting the bail bonds and surety bonds of the petitioner.

(viii) the petitioner would not stay in the same village where the prosecutrix is residing during the pendency of the trial.

10. Before releasing the petitioner on bail, the trial Court shall ensure that the aforesaid conditions are fulfilled by taking an undertaking on behalf of the petitioner. An undertaking on behalf of an office bearer of the Village i.e. Sarpanch or Nambardar or a Municipal Councillor of the concerned village shall also be taken by the trial Court before accepting the bail bonds.

11. In the aforesaid terms, the petition is allowed.

12. However, it is made clear that nothing expressed hereinabove would be construed to be an expression of opinion on merits of the case.

22.11.2024

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**(HARPREET KAUR JEEWAN)
JUDGE**

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