

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

219

CRM-M-60560-2023 (O&M)  
Date of decision: 02.02.2024

Sunil Rajak

...Petitioner

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Ajay Chaudhary, Advocate  
for the petitioner.

Mr. Neeraj Poswal, AAG, Haryana.

Mr. R. S. Mamli, Advocate  
for respondent No. 2.

MANISHA BATRA, J. (Oral)

1. This petition has been filed by the petitioner under Section 439 Cr.P.C. seeking regular bail in case bearing FIR No. 526 dated 07.09.2018, registered under Sections 215, 363, 366 of the IPC and Section 6 of the POCSO Act, 2012 at Police Station Sector 5, Gurugram.
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 a complaint submitted by the complainant 'N' (*name withheld*) alleging therein that his daughter 'N' (*name withheld*), aged about 18 years, had left home at

**Neutral Citation No. 2024:PHHC:014668**

about 12:00 PM on 06.09.2018 without informing anybody. He had made searches for her but could not find her. He raised suspicion that she had been taken away by some boy. After registration of the FIR, investigation proceedings were initiated. The father of the present petitioner was apprehended on 07.10.2018. He suffered a disclosure statement, on the basis of which, offence under Section 216 of IPC was added, as it was revealed that he had harboured escape of the present petitioner with the daughter of the complainant. After completion of necessary investigation and usual formalities, challan was presented in the Court against the father of the petitioner, namely Laxman Rajak, and the same is pending before the trial Court. The prosecutrix was produced by her mother before the police on 25.03.2023. Her statement was recorded under Section 164 Cr.P.C., on the basis of which, offence under Section 6 of the POCSO Act was added as the victim was found to be a juvenile, aged about 15 years and 09 months. She was medically examined. The present petitioner could not be arrested. He was declared a proclaimed offender. He was arrested in another FIR No. 795 dated 26.03.2023, registered under Section 174-A of IPC at Police Station Shivaji Nagar, Gurugram and was ordered to be joined in the investigation of this case. His disclosure statement was recorded and supplementary challan against the present petitioner was submitted. Charges under Sections 363, 366, 216 of IPC and Section 6 of the POCSO Act were framed and presently, the petitioner and his father are facing trial. The petitioner had moved an application for grant of regular bail before the trial Court but the same was dismissed, vide order dated 14.09.2023.

Neutral Citation No. 2024:PHHC:014668

3. The present petition has been filed by the petitioner on the ground and his counsel has argued that he has been falsely implicated in this case. In fact, the petitioner has solemnized marriage with the prosecutrix, who is major. Two children have already been born to them and they are living happily. Their marriage is neither void nor voidable. Even a compromise has been effected between the petitioner and complainant and a written compromise in this regard had been executed on 27.03.2023. The prosecutrix, complainant and other material witnesses have not implicated him in the subject crime. Even a petition for quashing of the FIR on the basis of the said compromise has been filed by the petitioner, which is pending before a coordinate Bench of this Court. The trial is likely to take some time. His further detention would not serve any useful purpose. Hence, it is prayed that the present petition deserves to be allowed.

4. *Per contra*, learned State counsel has argued that there are serious allegations against the petitioner. He was even declared a proclaimed offender. There will be no undue delay in conclusion of trial. Therefore, he has argued that the present petition is liable to be dismissed.

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

6. The petitioner is alleged to have enticed away the prosecutrix/respondent No. 2 on the pretext of performing marriage with her and is alleged to have committed rape upon her. However, in their respective sworn depositions recorded before the trial Court, the prosecutrix and the complainant, who have appeared as PW-1 and PW-3, have exonerated the petitioner from the allegations as levelled against him. The prosecutrix is

Neutral Citation No. 2024:PHHC:014668

shown to have mentioned that she was 24 years old. She had performed marriage with the petitioner and had been living with him ever since 2021. Even two children have born to her. PW-3 is also shown to have resiled from the allegation that the petitioner had enticed away his daughter or had committed rape upon her or that his daughter was less than 18 years of age at the time when she had left her house. The petitioner, who was already in custody in aforesaid FIR No. 795, was formally arrested in this case on 26.03.2023. The trial is likely to take some time. Keeping in view the nature of evidence which has come on record, the fact that the material witnesses have themselves claimed that the victim was a major when she had gone with the petitioner and hence, it is even debatable that offences under Section 6 of the POCSO Act and Sections 363, 366 of IPC are even made out, the period spent by the petitioner in custody and the attendants facts and circumstances of this case, I am of the considered opinion that no useful purpose would be served by keeping him in custody anymore.

7. Accordingly, the present petition is allowed and the petitioner is ordered to be released on regular bail, subject to his furnishing personal/surety bonds to the satisfaction of the trial Court/Duty Magistrate concerned.

8. It is made clear that any observation made herein above is only for the purpose of deciding the present petition and the same shall have no bearing on the merits of the case.

02.02.2024

(MANISHA BATRA)  
JUDGE

Waseem Ansari

Whether speaking/reasoned

Whether reportable

Yes/No

Yes/No

