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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

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**CRM-M No.56317 of 2024
Date of Decision: 19.11.2024**

Shiv Kumar

... Petitioner

Versus

The State of Haryana and another

... Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. R.K. Choudhary, Advocate,
for the petitioner.

Mr. Neeraj Poswal, AAG, Haryana,
for the respondent-State.

MANISHA BATRA, J. (Oral)

1. The instant one is the second petition for grant of regular bail as filed by the petitioner in case arising out of FIR No.477 dated 10.12.2023 registered under Sections 354-A and 376 (2) (e) of IPC (Section 376(2)(e) was deleted and Sections 376, 420 and 336 of IPC were added later on) at Police Station Old Faridabad, District Faridabad. His first petition bearing CRM-M No.9339 of 2024 had been dismissed vide order dated 30.05.2024.

2. The aforementioned FIR was lodged against the petitioner on the basis of written complaint submitted by the victim 'K' (name withheld) alleging therein that she was taking treatment from an institution run by the petitioner for the gall-stones in her body. On

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03.12.2023 while treating her, the petitioner had inserted his fingers thrice in her private parts and had pressed her breasts and had threatened not to tell about the same fact to anyone. After registration of FIR, investigation proceedings were initiated. The victim refused to get her medical examination conducted. The petitioner was arrested on 10.12.2023. During the course of investigation, offence under Section 376(2)(e) of IPC was deleted and offences under Sections 376, 336 and 420 of IPC were added. The victim and her father have since been examined. The petitioner had filed an application for grant of regular bail which was dismissed by the Court of learned Additional Sessions Judge, Faridabad vide order dated 30.10.2024.

3. It is argued by learned counsel for the petitioner that he is in custody since 10.12.2023. After dismissal of his previous petition, the victim and her father have been examined. Neither of them have implicated him in commission of the offences for which he is being prosecuted. There was delay of seven days in reporting the matter to the police. The trial is likely to take time. No useful purpose would be served by keeping him in custody any more. The extended period of his incarceration and the fact that the victim has not implicated him in commission of offence of rape are circumstances which are substantive in nature and which make him entitled to be released on bail. Therefore, it is urged that the petition deserves to be allowed.

4. Learned State counsel who has advance notice of the petition and who is ready to argue the matter, on the other hand, has submitted that there are serious allegations against the petitioner, his previous petition for

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grant of bail had been dismissed on merit. There is no substantive change in the circumstances now. Therefore, 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 at considerable length and have gone through the record.

6. The petitioner is alleged to have committed offence of rape upon the victim by inserting his fingers into her private part while treating her on the fateful day. The victim and her father have since been examined and copies of their sworn depositions have been placed on record as Annexures P-6 and P-7 respectively. A perusal of testimony of the victim as recorded before learned trial Court reveals her to be stating that while treating her, the petitioner had applied some medicine on her body and was using a machine whereof she felt that she was touched by him on her chest and this fact had been told by her to her father. She further stated that nothing else had happened with her. She was declared hostile on the request of learned Public Prosecutor and was allowed to be cross-examined by him. However, even during cross-examination, she stated that she was wrong in assuming that the petitioner had inserted his fingers in her private part and also that nothing as alleged in her complaint had happened with her. In this manner, she is not shown to have implicated the petitioner in the commission of offence of rape.

7. Then coming to testimony of PW-2 i.e. father of the victim, who initially stated that his daughter had refused to accompany him to the clinic of the petitioner by disclosing that she felt that the petitioner used to

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touch her. Though during cross-examination, he too is shown to have stated that the allegations made in the complaint that the petitioner inserted finger in private part of the victim were not true but the same were recorded on the insistence of the police official. In this manner, even he is not shown to have supported the case of the prosecution with regard to commission of offence of rape by the petitioner. In view of the nature of the statements of the material witnesses recorded before the learned trial Court as discussed above; coupled with the fact that the petitioner is in custody for a period of about one year and that the trial is likely to take time, I am of the considered opinion that there is a substantive change in the circumstances which entitles the petitioner to seek concession of bail and further that he deserves to be released on bail at this stage. Accordingly, the petition is allowed and the petitioner is ordered to be admitted to bail subject to his furnishing personal as well as surety bonds to the satisfaction of learned trial Court/Illaq Magistrate/Duty Magistrate.

8. It is, however, clarified that the observations made hereinabove shall not be construed as an expression of opinion on the merits of the case.

9. Since the main petition has been allowed, pending application, if any, is rendered infructuous.

19.11.2024
Parveen Sharma

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No