

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M No.61033 of 2023
Date of Decision: 20.01.2024

Vasudeep @ Mohinder ... Petitioner

Versus

State of Punjab ... Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Manu Loona, Advocate,
for the petitioner.

Mr. P.S. Pandher, AAG, Punjab,
for the respondent-State.

MANISHA BATRA, J.

1. 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
90	14.08.2023	Bahav Wala, District Fazilka	376-D of IPC and Section 4 of the Protection of Children from Sexual Offences Act, 2012 (For short “POCSO Act”) (Section 323 of IPC added later on and Section 4 of POCSO Act deleted and Section 6 of POCSO Act added later on)

2. Brief facts relevant for the purpose of disposal of this petition are that the aforementioned FIR was registered on the basis of statement recorded by the victim “M” (name withheld) alleging therein that she was 16½ years old and was studying in 11th Class in local Government school. Her Physical Education Teacher Daulat Ram is residing in her neighbourhood and the petitioner who is his son was

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having friendly relations with her being a neighbourer. Even the co-accused Sandeep Kumar @ Seepu who is friend of accused Vasudeep was known to the victim. She further disclosed that her parents and herself had told the father of the petitioner to inform them whenever some job was available for her. As on the intervening night of 13/14.08.2023 at about 1:00-1:30 AM while the victim was sleeping in her house, she received a call from the cell phone of the petitioner, who told her to come outside while saying that some important conversation was to be made. She refused to do so but another person called from a different phone who while representing him as father of the petitioner told her to come outside as conversation with regard to filling form for some job was to be made. Believing him, she went outside but only found the petitioner and the co-accused standing outside her house. They forcibly took her to a nearby Nohra wherein accused Sandeep Singh tied her with a cot whereas the petitioner after closing her mouth forcibly committed rape upon her, and the co-accused kept as a guard while standing outside the Nohra. The father of the victim had come out in the meanwhile while making search for her and on hearing his voice, both of them fled away. After registration of FIR, investigation proceedings were initiated. The victim was medically examined. The petitioner was arrested on 14.08.2023. Co-accused was also arrested. After completion of investigation proceedings and usual formalities, challan was presented in the Court and presently, they are facing trial for the aforementioned offences.

3. The instant petition has been filed on the grounds and it is argued by learned counsel for the petitioner that he has been falsely implicated in this case. Neither the victim nor her parents have supported the version of the prosecution and have totally resiled from the fact that any act

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of rape was committed upon the victim. The trial is likely to take time. No useful purpose would be served by detaining him in custody any more. He had moved an application for bail before learned trial Court which has been dismissed. With these broad submissions, it is argued that the petition deserves to be allowed.

4. Status report has been filed by the respondent-State. Learned State counsel has argued that there are serious allegations against the petitioner as he along with the co-accused had committed gang rape/aggravated penetrative sexual assault upon the minor victim. DNA report is against him. The trial is going at a fast pace. Hence, 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 perused the material placed on record carefully.

6. The petitioner along with the co-accused is alleged to have subjected the victim to gang rape as on the intervening night of 13/14.08.2023. However, when the prosecutrix and her parents stepped into the witness box before learned trial Court, neither of them have supported the prosecution version at all. Rather they have given a clean chit to the petitioner and the co-accused by saying that no act of rape had at all committed with the victim and that even the petitioner and co-accused were innocent. No doubt, the DNA report goes against the petitioner, however, it is well settled proposition of law that such report cannot conclusively fix the identity of miscreant, if it is the sole piece of evidence as observed by High Court of Gujarat in **State of Gujarat v. Jayantibhai Somabhai Khant**, 2015 CriLJ 3209 and as observed in judgment passed by High Court of Karnataka in **Sri Paramesha v. State of Karnataka**, 2021 (2) KantLJ 483.

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Keeping in view the nature of the evidence which has come on record in the form of testimonies of the petitioner and her parents who are the star witnesses of the case, the period of incarceration and the attendant facts and circumstances of the case but without meaning to make any comment on the merits of the case, I am of the considered opinion that the petition deserves to be allowed at this stage Hence, the same 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/Illaqa Magistrate.

20.01.2024
manju

(MANISHA BATRA)
JUDGE

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