

215 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-61175-2023
Date of decision: 12.01.2024

SARTAJ AHMADPetitioner

versus

STATE OF PUNJABRespondent

CORAM: HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN

Present: Mr. Manoj Tanwar, Advocate
for the petitioner.

Mr. Kunwarbir Singh, AAG, Punjab.

HARPREET KAUR JEEWAN, J. (ORAL)

1. The present 4th bail application has been filed by the petitioner under Section 439 Cr.P.C. for grant of regular bail in case FIR No.43 dated 24.02.2021, under Section 376 IPC and Sections 4 and 6 of POCSO Act, 2012, registered at Police Station City Gurdaspur (Annexure P-1).

2. Learned counsel for the petitioner *inter alia* contends that the petitioner has been falsely implicated in this case. The victim had levelled allegations against her maternal aunt and uncle for harassing and beating her. Even in her first statement recorded under Section 164 Cr.P.C., the victim has not levelled any allegations against the petitioner. However, in the subsequent statement under Section 164 Cr.P.C. (Annexure P-2) by the prosecutrix was under the fear of her maternal aunt and uncle wherein, she has alleged allegations against the petitioner. Learned counsel for the petitioner further contends that after the death of the mother of the prosecutrix, her father performed second marriage and thereafter, her father died in an accident. The step-mother of the prosecutrix had sent her to live with her maternal aunt and uncle, who used to beat her up. The

petitioner was working at the shop of the maternal uncle of the prosecutrix and he used to see the atrocities being committed to the victim by them. It is further contended on behalf of the petitioner that the statement of all the material witnesses (Annexures P-2 to P-4) has already been recorded and as per the report of FSL examination of the victim (Annexure P-7) and the statement of the doctor/PW-7 (Annexure P-8), no male DNA was detected.

3. The first and second bail application of the petitioner was dismissed as withdrawn, as per orders dated 10.02.2022 (Annexure P-9) and 02.12.2022 (Annexure P-10) respectively and the third bail application of the petitioner was dismissed on merits, as per order dated 23.02.2023 (Annexure P-11). Learned counsel for the petitioner further contends that the petitioner is in custody since a long time and the trial is going to take some time, so prayer was made for releasing the petitioner on regular bail.

4. The learned State counsel has opposed the bail application on the ground of gravity of allegations levelled against the petitioner.

5. I have considered the aforesaid contentions and perused the record.

6. As per the FIR, the victim, who is aged about 13 years, made a telephonic call in the Police Station alleging that her parents had expired and she is presently residing with her maternal aunt and uncle, who have physically assaulted her. The victim was taken to Children Home, Gurdaspur and as per her medical test, she was found to be pregnant. The third bail application of the petitioner was dismissed by the Coordinate Bench vide order dated 23.02.2023 (Annexure P-11) with the observations that the offence alleged to have been committed by the petitioner is serious in nature and keeping in view the age of the prosecutrix and the allegations that a teenage girl has been physically and sexually assaulted.

7. After dismissal of the third bail application, learned counsel for the petitioner has failed to point out that there is any change of circumstances. The minor victim was found to be pregnant. As per report (Annexure P-7), the DNA examination of the blood sample of the petitioner was done with the “vaginal swabs” belonging to the victim and not the DNA sample of the foetus or the child. The trial is still going on. The evidentiary value of this report will be seen during trial.
8. Keeping in view the gravity of the allegations levelled against the petitioner, the present application stands dismissed.
9. All the pending miscellaneous applications, if any, shall also stand disposed of.

(HARPREET KAUR JEEWAN)
JUDGE

12.01.2024
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Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No