



206 IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH
CRM-M-61708-2023
Date of decision: 30th May, 2024

Dinesh
...Petitioner(s)
Versus

State of Punjab
...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Tapish Gupta, Advocate for the petitioner.
Mr. A.S. Samra, AAG, Punjab.

MANISHA BATRA, J (ORAL):-

The present petition has been filed under Section 439 of Cr.P.C.
seeking regular bail in FIR mentioned below:-

FIR No.	Date	Police Station	Sections
45	27.04.2023	Urban Estate Patiala, District Patiala	376 of IPC, 1860 and Section 6 of POCSO Act, 2012 (charges framed under Section 376 of IPC and 4 of POCSO Act, 2012

2. Brief facts of the case relevant for the purpose of disposal of this petition are that on 27.04.2023, on receipt of an information from Mata Kaushalya Hospital regarding a fifteen years old minor girl namely ‘S’ (name withheld) having given birth to a child, a police party headed by SI- Gurpreet Kaur reached at the hospital and after obtaining opinion of doctor recorded statement of the victim ‘S’ who stated that the petitioner who was living in her neighbourhood used to harass and tease her whenever he found opportunity and also used to insist her to have friendship with him. He also



induced her on the pretext of performing marriage with him and by making other alluring conversations. She gradually fell into his trap. On 19.08.2022, on the day of Janamashtmi, her mother had gone to temple to pay obeisance and finding her alone at home, the petitioner entered inside and forcibly established physical relations with her. She never met the petitioner since then as shortly thereafter, they had changed their residence and started living elsewhere. She stated that her health was not proper from some time but out of fear, she did not disclose anything to her parents but on the morning of 07.04.2023, she had severe pain in her abdomen and when she was taken to the hospital, she had given birth to a female infant. Only then, she disclosed about the incident of rape committed by the petitioner with her. After registration of FIR, investigation proceedings were initiated. The statement of victim was also got recorded under Section 164 of Cr.P.C. The petitioner was arrested on 28.04.2023. He was also medically examined. His blood samples as well as the blood samples of child born to the victim, were sent for forensic examination. After completion of necessary investigation and usual formalities, challan under Section 173 of Cr.P.C. was presented in the Court and presently, the petitioner is facing trial for the commission of the aforementioned offences. He had moved an application for grant of regular bail before the learned trial Court which was dismissed vide order dated 25.10.2023.

3. The present petition has been filed by the petitioner on the grounds and it is argued by his counsel that he has been falsely implicated in this case by the prosecutrix. There was inordinate and unexplained delay in



lodging of the FIR which created a dent over the veracity of the prosecution story. The blood samples of the petitioner, prosecutrix and the female child born to her were sent to the CFSL, Chandigarh for DNA examination and as per the report, he is not biological father of the female child born to the victim and this fact itself is sufficient to prove that the petitioner had never subjected the prosecutrix to any act of penetrative sexual assault. He is in custody since 28.04.2023. Trial is likely to take time. No useful purpose would be served by keeping him in custody. The prosecutrix and her mother have since been examined. There are no chances of his intimidating the witnesses. Therefore, it is argued that the petition deserves to be allowed.

4. Status report has been filed by respondent-State as per which, there were serious allegations against the petitioner as he had allured the minor victim and on the pretext of performing marriage with her, he had established forcible physical relations with her on 19.08.2023. Learned State counsel while admitting that as per the CFSL report, the petitioner is not the biological father of the child born to the prosecutrix, has submitted that since the prosecutrix and her mother, in their statements recorded before the trial Court, have fully supported the prosecution version therefore irrespective of the fact that the petitioner is not found to be the biological father of the child born to the victim, he cannot be exonerated as the statement of the prosecutrix as recorded under Section 164 of Cr.P.C. and then before the trial Court, goes to show that it was the petitioner who had sexually assaulted her as on 19.08.2022.

5. I have heard learned counsel for the petitioner as well as learned



State counsel at considerable length and have gone through the record carefully.

6. On hearing the contentions raised by learned counsel for the petitioner as well as learned State counsel and on going through the record, I am of the considered opinion that since in her sworn deposition the prosecutrix has fully supported the prosecution version by saying that the petitioner had committed rape upon her and since there is no material on record to show that any implicit reliance at this stage can be placed upon the DNA report, as per which petitioner is not the biological father of the child born to the victim and as it is for the trial Court to thoroughly assess and evaluate the evidence produce before it at the time of conclusion of the trial and to record a finding in this regard therefore, keeping in view the nature of the allegations as levelled against the petitioner in the statements recorded by the prosecutrix under Section 164 of Cr.P.C. as well as before the trial Court, the quantum of sentence which the conviction may entail and the attendant facts and circumstances of the case, but without meaning to make any comment on the merits thereof, I am of the considered opinion that the petition does not deserve to be allowed. Accordingly, the same is dismissed.

7. Since the main petition has been dismissed, pending application if any is rendered infructuous.

[MANISHA BATRA]
JUDGE

30th May, 2024
Parveen Sharma

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| 1. Whether speaking/ reasoned | : | Yes |
| 2. Whether reportable | : | Yes |