

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

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CRM-M-62271-2023 (O&M)
Date of decision: 31.01.2024

Vikas Kumar

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Gaurav Vir Singh, Advocate
for the petitioner.

Mr. Neeraj Poswal, AAG, Haryana.

MANISHA BATRA, J. (Oral)

1. The present petition has been filed under Section 439 of Cr.P.C. by the petitioner seeking grant of regular bail in case FIR No. 183 dated 16.05.2023, registered under Sections 8 and 12 of the POCSO Act, 2012 (Section 6 of the POCSO Act added later on) at Police Station Mullana, District Ambala.

3. Brief facts of the case relevant for the purpose of disposal of the present case are that the aforementioned FIR was registered on the basis of the statement recorded by the complainant/victim 'M' (*name withheld*) alleging therein that now she was studying in 12th Class and was about 16 years of age. Previously, while studying in 10th Class, she was having friendship with the present petitioner but after some time, there was a break up between them. She alleged that the petitioner used to stalk her when she used to go to her school. He used to stop her and extend threats to her that

she could not stop being friendly with him or deny to meet him and otherwise, he would kill her brother. Feeling harassed, this fact had been told by her to her father. On this, a *Panchayat* meeting was convened and the family members of the petitioner were also called in the said meeting. They tried to prevail good sense upon the petitioner and parents of the petitioner had taken responsibility for him. Still, the petitioner was not mending his ways and continued harassing her. She alleged that on the intervening night of 15/16.05.2023, at about 03:00 AM, the petitioner came inside the room of her house, wherein she was sleeping along with her brother and while closing her mouth with his hands, he tried to tear her clothing and tried to molest her. She raised alarm, on hearing which, her family members had woken up and reached there. The petitioner, who was under the influence of liquor at that time, however, managed to flee, though her father tried to catch him and sustained injuries. On these allegations, initially a case under Sections 8 and 12 of the POCSO Act was registered. The statement of the victim was also recorded under Section 164 Cr.P.C. However, she recorded a supplementary statement subsequently, on the basis of which, offence under Section 6 of the POCSO Act was added later on. The petitioner was arrested on 20.05.2023. After completion of necessary investigation and usual formalities, challan under Section 173 Cr.P.C. was presented in the Court and presently, the petitioner is facing trial for commission of aforesaid offences. He had moved an application for grant of regular bail before the trial Court but the same was dismissed, vide order dated 29.09.2023.

4. The present petition has been filed on the grounds and it has been argued by his counsel that he has been falsely implicated in this case. He did not commit the subject offences. His custodial interrogation is no

more required. Neither in her complaint nor in her statement recorded under Section 164 Cr.P.C., any allegation of committing any act of sexual intercourse/aggravated penetrative sexual assault by him, had been levelled by the victim. Even in her sworn deposition as recorded in the Court, the victim, who had since been examined, has not made any allegation that the petitioner had ravished her. Therefore, no case for commission of offence punishable under Section 6 of the POCSO Act has been made out as against him and it was only on the basis of the supplementary statement recorded by the victim that this offence had been added. The petitioner is in custody since 20.05.2023; trial is likely to take a long time. His further detention is not going to serve any useful purpose. Therefore, he has argued that the present petition deserves to be allowed.

5. *Per contra*, learned State counsel has argued in terms of the status report that there are serious and specific allegations against the petitioner. The trial might be expedited. It is, however, not disputed that in her sworn statement as recorded in the Court, the victim has not levelled any allegation of her being subjected to any act of aggravated penetrative sexual assault as against the petitioner. Therefore, he has argued that the petition does not deserve to be allowed.

6. I have heard learned counsel for the parties at considerable length and have also gone through the material placed on record carefully.

7. A perusal of the record reveals that in her statement as recorded under Section 164 Cr.P.C., the allegations as levelled by the victim against the petitioner were of entering into her house in the wee hours of the intervening night of 15/16.05.2023 and about trying to molest her after closing her mouth only and not of ravishing her. Even in the complaint, this

was not the allegation that the petitioner had committed any offence of rape upon her. Annexure P-5 is the copy of statement as recorded by the victim in the Court, which also shows that she had stated that the petitioner had closed her mouth and tried to do forcible act with her and had torn off her clothing and on her raising alarm, her family members had woken up. As such, at this stage, it cannot be stated that the petitioner had committed any offence of aggravated penetrative sexual assault upon her. Even in MLR, no injury, either external or internal, was found on her person. The trial is likely to take time. Keeping in view the period spent by the petitioner in custody, the nature of subject offences and in view of the discussion made above, I am of the considered opinion that the petitioner deserves to be given benefit of regular bail.

8. 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. The petitioner shall not influence/intimidate or try to meet the victim or her family members; shall not visit their house or try to influence any other witness of the case. He shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the Court or to any Police Officer. He shall not commit any similar offence while on bail.

9. In case of violation of any of the above conditions, the jurisdictional Court shall be empowered to consider the application for cancellation, if any, and pass appropriate orders in accordance with law.

10. 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.

31.01.2024

Waseem Ansari

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned

Yes

Whether reportable

Yes