

225 IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-63142-2023
Date of decision: 5th March, 2024

Rajesh Masih @ Rakesh Masih @ Rajesh Kumar

...Petitioner(s)

Versus

State of Punjab

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Vipin Mahajan, 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.	Police Station	Sections
6	Tibber, District Gurdaspur Punjab	376-DA of Indian Penal Code, 1860 (for short 'IPC') and Sections 21 and 4 of Protection of Children from Sexual Offences Act, 2012 (for brevity 'POCSO')

2. Brief facts of the case relevant for the purpose of disposal of present petition are that the aforementioned FIR was registered on 25.01.2023 on the basis of a statement recorded by the prosecutrix Komal alleging therein that on 23.01.2023, at about 6:30 PM, while she was coming back from the Church of her village, she was intercepted by the petitioner and the co-accused Abhi who were riding on a motorcycle. While stopping

their motorcycle, they asked her to accompany them. She refused to do so, but was forcibly made to sit on the motorcycle by the present petitioner, who pulled her onto the same. The co-accused raised the speed of the motorcycle and both of them took her to a secluded place from where the accused Abhi was sent back by the present petitioner. Thereafter, the petitioner forcibly committed rape upon her by catching hold of her and throwing her on grass. He had also covered her mouth at that time. Subsequently, he left her at the house of her uncle. She disclosed about the entire incident to her uncle who advised her not to disclose about the incident to anyone. She mustered the courage to disclose about the incident to her maternal grandmother on 25.01.2023. She prayed for taking action against the culprits. On the basis of her statement, a case under Sections 376-DA of IPC was registered. Investigation proceedings were initiated. Statement of the prosecutrix was recorded under Section 164 of Cr.P.C., wherein she reiterated the stand as taken at the time of lodging of the FIR. She was medically examined. The petitioner was arrested on 26.01.2023. He was also medically examined. The co-accused Abhi was arrested and subsequently, granted concession of bail. 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.

3. The present petition has been filed by the petitioner on the grounds and it has been argued by his counsel that he has been falsely implicated in this case. The victim and her maternal grand-mother who appeared before learned trial Court have not supported the prosecution

version and have not implicated him in the subject crime at all. There is no medical evidence on record to connect the petitioner with the offences as alleged against him. It is also submitted that no useful purpose would be served by detaining the petitioner in custody anymore. Hence, it is urged that he deserves to be given concession of bail and the petition deserves to be allowed.

4. Learned State counsel has filed status report, supporting the version of the prosecution. It is submitted by him that there are serious allegations against the petitioner. Therefore, he does not deserve to be given concession of bail.

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. As per the allegations, the petitioner alongwith the co-accused had forcibly taken the prosecutrix alongwith them on 23.01.2023 and after taking her to a secluded place, had committed the act of aggravated sexual assault upon her. However, the prosecutrix while appearing into witness box before the learned trial Court, has not supported the prosecution version at all. A copy of her statement has been placed on record as Annexure P-2 and a perusal of the same reveals that she has exonerated the present petitioner as well as co-accused from the allegations as levelled against them, so much so that she had even been declared hostile and allowed to be cross examined by public prosecutor, but still no incriminating evidence could be extracted from her testimony as against the present petitioner.

7. With regard to the recording of her statement under Section 164 of Cr.P.C., she stated that the same was recorded under the pressure of the police officials. Her grand-mother is also shown to have appeared as PW-2 and she too has not supported version of the prosecution at that time. Keeping in view the nature of the evidence that has come on record, the period of incarceration of the petitioner and the attendant facts and circumstances of the case, I am of the considered opinion that the petition deserves to be allowed, hence, the same is allowed and the petitioner is ordered to be released on bail subject to his furnishing personal/surety bonds to the satisfaction of the Chief Judicial Magistrate/ Duty Magistrate concerned.
8. It is clarified that 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.

[MANISHA BATRA]
JUDGE

5th March, 2024
Parveen Sharma

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| 1. Whether speaking/ reasoned | : | Yes / No |
| 2. Whether reportable | : | Yes / No |