

CRM-M-63210-2023 (O&M)

2024:PHHC:069335

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**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

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CRM-M-63210-2023 (O&M)

Date of Decision: 16.05.2024

JUBER

...Petitioner

Versus

STATE OF HARYANA

...Respondent

CORAM:- HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN

Present:- Mr. Sarfaraj Anjum Mor, Advocate
for the petitioner.

Mr. Kirpal Singh Thakur, AAG, Haryana.

HARPREET KAUR JEEWAN, J.

1. The present petition has been filed under Section 439 Cr.P.C. for grant of regular bail to the petitioner in case bearing FIR No.229 dated 28.06.2023 (Annexure P-1) under Sections 323, 362-A, 376 IPC and Section 4 of the POCSO Act, 2012 registered at Police Station Ferozepur Jhirka, District Mewat.
2. Status report by way of an affidavit of Surender Kumar, HPS, Deputy Superintendent of Police, Nuh along with Report of RFSL (Annexure R-1) and DNA report FSL, Madhuban (Annexure R-2) have been filed on behalf of the respondent-State, which are taken on record.
3. As per the prosecution case, the FIR was registered at the instance of the father of the prosecutrix with the allegations that the prosecutrix aged about 18 years was missing since 25.06.2023 as she had gone to attend the call of nature at about 4.30 am and she did not come back. When she did not return for a considerable time, father of the prosecutrix made a search of her. On 26.06.2023 at

about 4.30 a.m., he found her in unconscious condition near Government School, Patkhori. The prosecutrix was brought back to home and then she disclosed that she was kidnapped by Irshad and Juber (present petitioner) on gun point. They also got her sniffed some intoxicant and brought her to deserted area, where both of them committed rape upon her turn by turn. Thereafter, Irshad and Juber (present petitioner) called Wajid, Sabar and Wasim and they too committed rape upon the prosecutrix due to which she became unconscious. When the complainant made a complaint to Kanja, Abdul Karim and Sabar in this regard, they abused him, did manhandling and also extended threat to kill him in case he would report the matter to the police. Thereafter, action was sought against the culprits. On the basis of the said complaint, the FIR was registered and medical examination of the victim was got conducted.

4. Learned counsel for the petitioner *inter alia* contends that the petitioner has been falsely implicated in this case and he is in custody since 04.07.2023. There is an unexplained delay of 2 days in lodging of the present FIR against the petitioner. He further contends that investigation is complete and final report under Section 173 Cr.P.C. has been presented before the trial Court. The prosecutrix and her parents have turned hostile and not supported the prosecution case as per statements (Annexures P-3 to P-5). As per affidavits (Annexures P-6 and P-7) duly executed by the parents of the prosecutrix, the FIR was registered due to political fraction and enmity. Even the Investigating Officer has declared all the accused except the petitioner as innocent in the present FIR. The petitioner is ready to face trial. He submits that conclusion of trial is going to take time, as such prayer for releasing the petitioner on bail has been made.

5. On the other hand, learned State counsel on instructions from

concerned Investigating Officer has opposed the bail petition on the ground of serious allegations levelled against the petitioner. He has informed that investigation is complete and final report under Section 173 Cr.P.C. has been presented before the trial Court.

6. I have considered the aforesaid submissions and perused the paper-book.

7. As per the status report, statement of the prosecutrix was recorded under Section 164 Cr.P.C. and during the investigation the date of birth of the prosecutrix was found as 14.01.2006, which was got verified from the school. The petitioner was arrested on 04.07.2023. The petitioner is also involved in another case bearing FIR No.115/2015 under Sections 3/5, 8/9 RBA Act at Police Station Pahari, Bharatpur, Rajasthan and the trial in the said case is pending. During the investigation, it was found that other co-accused of the petitioner were nominated in the FIR due to party fraction, as such offence under Sections 376-D, 328, 506 IPC, Sections 25/54/59 of the Arms Act and Section 6 of the POCSO Act, 2012 were deleted. However, offence under Section 376 IPC and Section 4 of the POCSO Act, 2012 were added on 04.09.2023. After completion of the investigation, the challan was presented on 13.09.2023 and it was submitted in the Court on 16.09.2023. The charges were also framed on 29.09.2023. There are total 17 witnesses, out of which 3 witnesses have been examined.

8. As per the FIR, the prosecutrix was allegedly recovered from a public place lying in an unconscious condition in early hours of the day i.e. about 4.30 a.m. on 26.06.2023. The prosecutrix, when appeared as PW-1 had disclosed her age as 18 years whereas age of the petitioner is 35 years. The petitioner is also having history of another case in which he is facing trial. Though the victim has

not supported the prosecution version in her examination-in-chief (Annexure P-3), however after declaring her hostile, she had been confronted with counselling report, her report given before the counsellor, her statement recorded under Section 164 Cr.P.C and history given by her before her medical examination was conducted.

9. As per RFSL report (Annexure R-1), human semen was detected in the vaginal samples taken from the victim. As per date of birth of the prosecutrix i.e 14.01.2006, she was minor on the day of the alleged occurrence and there is medical evidence against the petitioner.

10. The appreciation of the entire evidence and medical evidence is matter of trial. However, keeping in view the fact the prosecutrix is minor, the offence alleged to have committed under Section 4 of the POCSO Act, 2012 is punishable within minimum imprisonment of 10 years and may extend to imprisonment for life, as such offence to have been committed by the petitioner is serious in nature. There are chances absconding of the petitioner.

11. In view of the above, no ground is made out to release the petitioner on bail.

12. Consequently, the present petition is dismissed.

13. It is made clear that nothing expressed hereinabove would be construed to be an expression of opinion on merits of the case.

14. Pending miscellaneous application (s), if any, shall also stand disposed of.

(HARPREET KAUR JEEWAN)
JUDGE

16.05.2024

P.Bhatt

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No