

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

204

CRM-M No.63709 of 2023
Date of Decision: 10.04.2024

Sheelo Bai alias Sheela Bai ... Petitioner

Versus

State of Punjab ... Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Ashok Kumar Khunger, Advocate,
for the petitioner.

Mr. Amandeep Singh Samra, AAG, Punjab.

MANISHA BATRA, J.(Oral)

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

FIR No.	Dated	Police Station	Sections
146	19.08.2023	Sadar Fazilka, District Fazilka	363 and 366-A of IPC

2. Factual matrix of the case relevant for the purpose of disposal of the present petition is that the aforementioned FIR was registered on the basis of statement recorded by the complainant “B” (name withheld) alleging therein that on 27.07.2023, she along with her daughter “D” (name withheld) had come from her village to Fazilka City as they had to do some work. Her daughter did not return home. They had been searching for her eversince then and now they had come to know that she had been taken away by some unknown boy on the pretext of performing marriage with her. After registration of FIR, investigation proceedings were initiated. The prosecutrix was subsequently recovered

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on 16.10.2023. Her statement under Section 164 of Cr.P.C. was recorded wherein she alleged that she had been forcibly taken away by accused Kaka and Manpreet Singh on a motorcycle near Railway Station, Fazilka and was brought to the house of the present petitioner wherein both the above named accused Kaka and Manpreet committed rape upon her. About ten days back, she was got released from the house of the petitioner by one Aman and had gone to his house with him but the petitioner had again brought the prosecutrix to her house and she had managed to flee from there only 2-3 days back. Offences under Sections 376-D read with Section 34 of IPC and Section 4 of Protection of Children from Sexual Offences Act, 2012 were added on the basis of this statement. The prosecutrix was medically examined. The petitioner was arrested on 17.10.2023. The co-accused could not be arrested. After completion of investigation, challan has been presented against the present petitioner and she is facing trial. She had moved an application for grant of bail before the Court of learned Additional Sessions Judge, Fazilka which had been dismissed vide order dated 16.11.2023.

3. It is submitted by learned counsel for the petitioner that the petitioner is in custody since last six months. She has been falsely implicated in this case. She has no concern with the co-accused who are still absconding. FIR had been lodged after a gap of 23 days from the date of alleged abduction/kidnapping of the prosecutrix for which no explanation has come forward and which raises a doubt about the truthfulness of the story narrated by the complainant as well as prosecutrix. The statement of the prosecutrix as recorded under Section 164 of Cr.P.C. is also quite

unnatural. Her custodial interrogation is no more required. The trial is likely

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to take time. No useful purpose would be served by keeping her in custody any more and, therefore, it is argued that she deserves to be extended benefit of bail.

4. Per contra, learned State counsel has contested the petition in terms of the status report by arguing that there are serious and specific allegations against the petitioner who had facilitated the co-accused in commission of offences of committing act of gang rape/penetrative sexual assault upon the minor prosecutrix and kept her confined in her house for over a period of 15 days. The prosecutrix is yet to be examined. There are chances of petitioner's fleeing or intimidating the prosecutrix and other material witnesses if extended benefit of bail. Therefore, it is argued that the petition does not deserve to be allowed.

5. I have heard learned counsel for the petitioner as well as learned State counsel at considerable length and have gone through the record.

6. As per the allegations, the co-accused Kaka and Manpreet Singh had taken away the minor prosecutrix from her lawful guardianship on 27.07.2023 by making her to go from Fazilka City with an intent to force or seduce her to illicit intercourse and had committed gang rape upon her while keeping her confined in the house of the present petitioner. The petitioner, in this manner, is alleged to have facilitated/abetted the commission of offence of penetrative sexual assault/gang rape being committed upon the minor prosecutrix. The allegations against her are, therefore, serious in nature. The prosecutrix is yet to be examined. The fact that there is delay in reporting the factum of kidnapping of the prosecutrix herself on the part of her mother to the police is a question that can be decided only on the basis of the evidence

led during the course of trial and not at this stage. A reasonable

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apprehension has been expressed that the petitioner might intimidate the material witnesses including the prosecutrix if extended benefit of bail. Keeping in view the nature of the allegations that have been levelled against the petitioner, the quantum of sentence which the conviction may entail and the attendant facts and circumstances, I am of the considered opinion that the petition does not deserve to be allowed. Hence, the same is dismissed.

10.04.2024
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(MANISHA BATRA)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No