

206

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

CRM-M-64182-2023 (O&M)

Date of Decision: 04.01.2024

DOCOTOR PRASAD

.....PETITIONER

Vs.

STATE OF HARYANA AND ANOTHER

.....RESPONDENTS

CORAM: HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN

Present: Mr. Surender Saini, Advocate, for the petitioner.

Mr. Kirpal Singh Thakur, A.A.G., Haryana.

HARPREET KAUR JEEWAN J. (ORAL)

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.237 dated 05.05.2023 (Annexure P-1) registered under Sections 363, 363-A, 376-D and 506 of the Indian Penal Code, 1860 (for short 'the IPC) read with Section 34 thereof, Section 6 of the Protection of Children from Sexual Offences Act, 2012 and Section 84 of the Juvenile Justice (Care and Protection of Children) Act, 2015.

2. Counsel for the petitioner contends that the victim escaped with the petitioner from the Brick Kiln as her parents were trying to marry her off to a boy of their caste and State but she disliked the said boy. After marriage, both stayed for 15 days at a Brick Kiln at Rajasthan and then they stayed at the native place of the petitioner at Chhatisgarh. The police had allegedly arrested the petitioner and the co-accused and recovered the girl from Benaras. Both were major and the co-accused of the petitioner has already

been granted the concession of regular bail by this Bench in a petition bearing No. CRM-M-57199-2023, vide order dated 07.12.2023 (Annexure P-10).

3. Learned State counsel has opposed the bail application on the ground of gravity of allegations and it was submitted that the petitioner is the main accused. The victim was minor as her date of birth is 02.05.2007 and the alleged occurrence took place on 04.05.2023.

4. I have heard learned counsel for the parties and have gone through the paper-book carefully.

5. The FIR was registered initially at the instance of the mother of the victim who alleged that she is a resident of U.P. but presently residing at one Brick Klin. On 04.05.2023 at about 03:30 p.m. her daughter/victim who is aged about 15 years had gone missing. Initially the FIR was registered under Sections 363 and 366 IPC and Section 84 of the Juvenile Justice Act (Care and Protection of Children) Act, 2015 but later on Section 6 of the POCSO Act and Sections 376-D and 506 of the IPC read with Section 34 thereof were incorporated.

6. After completion of the investigation, '*challan*' was presented and statement of the victim was recorded during the trial as Annexure P-4. The victim has categorically stated that on the date of occurrence she was alone at her '*Jhuggi*' as she had suffered head injury and her family members had gone for purchasing vegetables, then the present petitioner forcibly took her to his own '*Jhuggi*' and committed rape upon her. She has further stated that the petitioner had threatened to kill her in case she would disclose anything to her parents. On 4th when she went for washing the clothes and the mother of the present petitioner told her to go for an outing and thereafter, the

present petitioner took her to Kharkhoda and then she was handed over to accused Rajmiri to keep with him for few days. Thereafter, the present petitioner took her to his own house in his village. She has further stated that the petitioner had taken her phone and broken her sim so that she cannot call her mother and the petitioner had repeatedly committed rape upon the prosecutrix.

7. Keeping in view the age of the petitioner and the fact that the petitioner is the main accused to whom the sexual assault of a minor victim has been attributed, the petitioner does not deserve the concession of bail. There are no allegations against the co-accused of the petitioner regarding sexual assault of the prosecutrix. As per Annexure P-4, the victim has categorically stated that accused Rajmiri kept her like his sister and she has not attributed any overt act to the co-accused of the petitioner. As such, the present petitioner is not entitled to bail on the ground of parity as well.

8. The petitioner is the main accused in the present case. The offence is very serious. There are chances of absconding the accused in case he is released on bail during trial. As such, merely on the ground that the petitioner is in custody, he is not entitled to the concession of regular bail.

9. Consequently, the present petition is dismissed.

10. However, it is made clear that nothing expressed hereinabove would be construed to be an expression of opinion on merits of the case.

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

January 04, 2024

nitin

(HARPREET KAUR JEEWAN)

JUDGE

Whether Speaking	Yes
Whether reportable	No