

CRM-771-2024 IN/&
CRM-M-64818-2023 (O&M) - 1 - 2024 : PHHC : 049587

216 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

**CRM-771-2024 IN/&
CRM-M-64818-2023 (O&M)
Date of reserve: 20.03.2024
Date of Judgement: 09.04.2024**

MADAN LAL ... PETITIONER

V/S

STATE OF PUNJAB ... RESPONDENT

CORAM: HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN

Present: Mr. D.S.Gandhi, Advocate for the petitioner.
Mr. Ramandeep Singh, Sr. DA.G., Punjab.

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HARPREET KAUR JEEWAN, J.

CRM-771-2024

[1] This is an application for placing on record copy of the Medical record of prosecutrix and copy of the statement of the prosecutrix as Annexures A-1 to A-2. The same are allowed to be taken on record, subject to all just exceptions.

[2] Registry is directed to tag the same at the appropriate place.

[3] Disposed of.

Main case

[4] The present petition has been filed under Section 438 Cr.P.C. for grant of anticipatory bail to the petitioner in case bearing FIR No. 43 dated 25.04.2022 registered under Section 346 IPC (later on added 363, 366-A, 376 IPC and Section 6 of Protection of Children from Sexual Offences Act) at Police Station D-Division, District Amritsar.

[5] The present FIR was registered at the instance of the mother

of the prosecutrix alleging that her daughter, who is aged about 16 years was enticed away about 2 years ago by Sarwan Singh @ Samma, resident of Amritsar and regarding this incident, she got registered an FIR in Amritsar in the year 2019. The said case was fixed on 01.04.2022 and the prosecutrix had gone to District Courts Amritsar to give evidence. She along with her another daughter had also accompanied her daughter to District Court, Amritsar and found that three persons were standing outside the Court, who were constantly watching the prosecutrix and they have also shaken hands with the said Sarwan Singh. On 10.04.2022 at about 7.30/8 P.M., the prosecutrix went from her house to play but she did not return back. The complainant expressed strong belief that her minor daughter has been kept at an undisclosed place by petitioner Madan Lal, Pappu; a tea vendor and she requested for taking action against the present petitioner, Pappu; a tea vendor and Jyoti, another shop-keeper running a photo-stat shop near Mandir.

[6] Learned counsel for the petitioner *inter alia* contends that as per the version in the FIR, the alleged occurrence is dated 10.04.2023 whereas the complainant had approached the Police on 25.04.2023 and there is no reasonable explanation regarding 15 days delay in lodging the FIR. It is further contended that the complainant got registered another FIR No. 82 dated 04.09.2019 under Sections 363, 366, 376 IPC and Section 6 of Protection of Children from Sexual Offences Act at Police Station D-Division, District Police Commissionerate Amritsar (Annexure P-2) with similar kind of story and she is a habitual complainant and try

to involve innocent people in such false cases. As per the previous FIR

(Annexure P-2), the prosecutrix had herself admitted regarding her intention to get married to the co-accused but her parents were not ready.

The petitioner has been falsely implicated in this case. The prosecutrix has already been recovered from Manjeet Singh @ Manga, the main accused and the petitioner has been nominated only on the basis of suspicion. The petitioner is ready to join the investigation.

[7] Learned State counsel has opposed the bail application.

[8] Short reply by way of affidavit of Surinder Singh, Assistant Commissioner of Police, Central, Amritsar was filed in the Court which is taken on record.

[9] Learned State counsel has confirmed the factum of registration of the previous FIR No. 82 dated 04.09.2019 registered at Police Station D-Division, District Police Commissionerate Amritsar. Referring to Status report, it is further contended that after registration of the present FIR No. 43 dated 25.04.2022, the offence under Sections 363 and 366-A IPC was added vide GD No. 21 dated 04.06.2022. Since the prosecutrix could not be recovered, therefore Special Investigation Team comprising of Addl. Deputy Commissioner of Police (Headquarters) was constituted by the Commissioner of Police, Amritsar. Sarwan Singh @ Samma who was in custody in the previous FIR was brought on production warrants and he was questioned but no clue was found.

[9.1] As per the status report, accused Manjeet Singh @ Happy, the co-accused of the present petitioner was arrested on 08.07.2022 and prosecutrix was recovered from his possession. During

the interrogation, he has disclosed that he is having love affair with the

prosecutrix and he had taken the prosecutrix to different religious places and developed physical relationship with her but they have not solemnized marriage with each other. The medical examination of the prosecutrix was got done. As per her oscification test, conducted in Govt. Medical College, Amritsar her age is between 17 to 19 years.

[9.2] As per the status report, the statement of prosecutrix under Section 164 Cr.P.C. was recorded on 10.07.2022 in which she has disclosed about the role of the present petitioner. Thereafter, offence under Section 376 IPC and Section 6 of Protection of Children from Sexual Offences Act was added vide GD No. 19 dated 10.07.2022. It is further contended in the status report that the prosecutrix was again joined investigation on 20.09.2022 and her statement under Section 161 Cr.P.C. was recorded. The co-accused of the petitioner namely Brij Mohan Saini @ Pappu, Chah wala has been also arrested on 10.11.2022. The medical examination has been conducted and blood samples have been sent for DNA examination and another supplementary challan against co-accused Brij Mohan Saini @ Pappu, Chah wala was presented in Court. The Forensic report qua the vaginal swabs of the prosecutrix and DNA samples of accused Manjit Singh have been obtained. As per which, no human semen was detected. Proclamation notice against the present petitioner has been issued for 01.03.2024.

[10] I have considered the aforesaid contentions and perused the record.

[11] The petitioner is seeking concession of anticipatory bail under Section 438 Cr.P.C. However, as per the facts of the case, the

prosecutrix is a '*Child Victim*' of a 'Sexual Offence' regarding which previously FIR No. 82 has been registered at the instance of her mother. The prosecutrix is minor. The alleged occurrence of kidnapping took place when she went to appear as a witness in the previous case regarding her sexual abuse. After her recovery in the present case, her statement recorded under Section 164 Cr.P.C. indicates the role of the present petitioner who had assisted his other accused and also sexually abused the Child Victim. As per para No. 9 of the status report, the nick name of the petitioner is Joshi and victim has alleged that Joshi, Jyoti and other 2 persons also made physical relationship with her repeatedly and such relationships were made forcibly for a period of one month.

[12] Keeping in view the fact that it is a gang rape case of a minor victim, the custodial interrogation of the petitioner is necessary to elucidate the facts and modus operandi of the petitioner. The DNA comparison with the petitioner is also required. In such circumstances, no ground for pre-arrest bail is made out. Consequently, the present petition stands dismissed. However, no observations are made on the merits of the case.

[13] Pending miscellaneous application(s), if any, shall also stand disposed of.

09.04.2024

Janki

(HARPREET KAUR JEEWAN)

JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No