



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
207

CRM-M-60871-2024(O&M)

Date of Decision: 10.12.2024

Pawan @ Pawan Kumar

....Petitioner

Versus

State of Punjab

.... Respondent

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present: - Mr. Saksham Malhotra, Advocate for the petitioner.

Mr. Kunwarbir Singh, A.A.G., Punjab.

NIDHI GUPTA, J. (ORAL)

The petitioner has filed the present 1st petition under Section 483 of The Bharatiya Nagarik Suraksha Sanhita for grant of regular bail in case FIR No. 82 dated 10.06.2023 under Sections 363 and 366-A IPC (Section 10 of POCSO Act added on 27.09.2023 and Section 376(2)(n) IPC and Section 6 POCSO Act added on 22.12.2023), registered at Police Station, Division-4, Patiala (Punjab).

Learned counsel for the petitioner *inter alia* submits that the present FIR (Annexure P-1) was registered on the basis of the statement made by the father of the victim, the relevant portion of which reads as under:-

"Statement of XXXX son of Kanhaya, resident of Village Sultanipur, Police Station Arola, District Azamgarh (U.P.), presently residing at Baljit Colony, Sanaur Road, Village Chaura, Police Station Urban Estate, District



Patiala, aged about 34 years, Mobile No.88083 19125, 77101 26807. Stated that I am residing at above noted address and is working in Dairy Farm of Jit Singh, resident of Mathra Colony, Patiala. I have got four children i.e. eldest son Kishan, aged about 18 years, younger to him is my daughter XXXX, aged about 15 years, younger to her is my daughter, aged about 14 years and youngest one is my daughter Rimzim, aged about 8 years. My daughter XXXX, aged about 15 years, had been working as Maid in Kothi of Arun Aggarwal son of Chander Bhushan Aggarwal, resident of House #537, Near Naina Devi Mandir, S.S.T. Nagar, Patiala since past about one year. She used to leave from home at about 8.30 A.M. and come back at about 6.00 P.M. on 6.6.2023 at about 8.00 A.M., my daughter XXXX, aged about 15 years, left from home at about 8.00 A.M. on her job in S.S.T. Nagar, Patiala, however she didn't come back. I enquired about her from Kothi of Arun Aggarwal, on which it came to know that my daughter XXXX had come back after finishing her work at about 2.00 P.M. We kept on searching for her on our own level, however she is not traceable. I am sure that my daughter XXXX, aged about 15 years, has been taken away by some unknown youngster by alluring her on the pretext of performing marriage. Today, I alongwith my sister Kavita wife of Pintu, residing as tenant at MohallaLahori gate, Patiala were coming to Police Station Lahori Gate, Patiala for giving missing report of my daughter XXXX, when you alongwith Police party have met near Sarhandi Gate, Patiala. I have got recorded my statement with you, gone through, heard, it is correct. Due legal action may be taken.”

Learned counsel for the petitioner submits that the petitioner and the prosecutrix were known to each other. The allegations made in



the FIR are false and fabricated as is evident from the fact that victim in her statement under Section 164 Cr.P.C. (Annexure P-2) has categorically stated that she had gone with the petitioner on her own consent; that she had stayed with him on her own consent; and that he did not force her in any way. It is submitted that thereafter, no doubt the victim was recovered from the custody of the petitioner on 27.06.2023, whereafter her medical examination was conducted; however, as per the CFSL Report dated 31.07.2023 (Annexure P-3) presence of semen is not confirmed; and even DNA could not be ascertained.

Learned counsel for the petitioner further submits that the petitioner has been in custody since 27.06.2023 as undertrial. No useful purpose would be served by further detention of the petitioner in custody. Thus, it is prayed that the present petition may be allowed, and the petitioner be released on regular bail.

Learned counsel for the State opposes the prayer made on behalf of the petitioner and on instructions from ASI Nirankar Singh, submits that the victim is a minor girl being 15 years of age at the time of occurrence, whereas the petitioner is 22 years of age. It is submitted that FSL Report does not match as there was a delay in conducting the medical examination of the prosecutrix and samples were collected after some delay. It is admitted that the prosecutrix in her statement under Section 164 Cr.P.C. (Annexure P-2) has not supported the prosecution case. However, it is submitted on instructions, that the victim in her testimony as PW1 has supported the prosecution case.



Learned counsel for the State, on instructions, further informs that charges were framed in the present matter on 22.12.2023; and out of total 20 prosecution witnesses, 6 witnesses stand examined including the prosecutrix and the complainant.

Learned counsel for the State files custody certificate dated 09.12.2024, which is taken on record, as per which the petitioner has been in custody as an undertrial for a period of 1 year, 5 months and 10 days.

Having heard learned counsel for the parties, but without commenting on merits of the case, however, keeping in view the totality of the facts and circumstances of the case including the fact that: a) the custody period of 1 year, 5 months and 10 days undergone by the petitioner as an undertrial; b) no other case is pending against the petitioner as evident from the custody certificate placed on record; c) material witnesses i.e. the victim and the complainant stand examined; d) out of total 20 witnesses, 6 witnesses have been examined so far; and therefore, the conclusion of trial will take considerable time and no useful purpose would be served by further detention of the petitioner. Thus, the present petition is allowed.

The petitioner-Pawan @ Pawan Kumar S/o Rajan, is ordered to be released on regular bail on his furnishing bail/surety bonds to the satisfaction of the trial Court/Chief Judicial Magistrate/Duty Magistrate, concerned.



However, it is made clear that nothing stated above shall be construed as an expression of opinion on the merits of the case.

Pending application, if any, stands disposed of.

10.12.2024
Divyanshi

(NIDHI GUPTA)
JUDGE

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