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

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CRM-M-61142-2024

Date of decision: 12th December, 2024

Manjeet @ Manjeet Singh

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Samay Sandhawalia, Advocate for the petitioner.
Mr. Neeraj Poswal, AAG, Haryana.

MANISHA BATRA, J (ORAL):-

The prayer in this petition has been made by the petitioner for grant of regular bail in case arising out of FIR No.89 dated 10.05.2022 registered under Sections 376(3), 376(2)(f), 506, 457, 376(2)(n) and 376 of IPC and Sections 6 and 4(2) of Protection of Children from Sexual Offences Act, 2012 (for short 'POCSO Act') and Section 3 (2)(v) of the Scheduled Caste and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short 'SC/ST Act') at Police Station Titram, District Kaithal.

2. Brief facts of the case relevant for the purpose of disposal of this petition are that the aforementioned FIR had initially been registered against the accused Kuldeep @ Pinku, on the allegations that he had subjected the minor victim 'A' (name withheld) to rape on the intervening night of 09/10.04.2022 and repeatedly thereafter, on several occasions.

During the course of investigation, the victim filed another complaint

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levelling allegations that the petitioner had been subjecting her to rape from the last two years on the pretext of performing marriage with her. She recorded another statement under Section 164 of Cr.P.C. reiterating the similar allegations against the petitioner. On the basis of the same, the petitioner had been arrested on 10.06.2022 and is facing trial for commission of aforementioned offences. The prayer made by him for grant of regular bail by filing petition bearing *CRM-M-6171-2024* had been declined vide order dated 30.05.2024.

3. It is argued by learned counsel for the petitioner that the petitioner has become entitled to be released on bail since there is a substantive change in the circumstances as FSL and DNA report have been received and the same are negative. The victim and her family members have already been examined. However, trial is likely to take time since ten prosecution witnesses still remain to be examined. He is in custody from the last two and half years. He was not even named in the FIR and he was as named by the victim in her supplementary statement. It is submitted that the extended period of his incarceration coupled with the fact and the DNA as well as FSL report do not connect him with the commission of offence of rape with the victim, are sufficient grounds to entitle him to be extended benefit of bail. Therefore, it is urged that the petition deserves to be allowed.

4. *Per contra*, learned AAG, Haryana has submitted that the petition is not maintainable as the petitioner has been charge-sheeted for the commission of offence punishable under the provisions of the SC/ST Act along with the offence of rape. In fact, an appeal against the order of the



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learned Sessions Court rejecting the bail application, was maintainable, which has not been so filed. It is also argued that there is no even otherwise, there is no substantive or specious change in the circumstances entitling the petitioner to seek benefit of bail. There are serious allegations against him. The victim in her sworn deposition has supported the prosecution version. It is, therefore, urged 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 carefully.

6. With regard to the question of maintainability of the present petition, in view of the fact that apart from the offence punishable under Section 6 of POCSO Act, the petitioner has been charge sheeted under the provisions of SC/ST Act as well, learned counsel for the petitioner has relied upon '*Somashekar v. State by Rural Police Station Authorities, Sakaleshpura, (Karnataka) : Law Finder Doc Id # 2347851*' wherein High Court of Karnataka, while dealing with a petition for grant of regular bail had considered the same question and had observed that where the offences punishable under the provisions of two special enactments vis SC/ST Act and POCSO Act are invoked, a petition under Section 439 of the Code of Criminal Procedure (Which is *pari materia* with Section 483 of BNSS) before the High Court is maintainable. It was also observed that when there is a conflict between the provisions of two special enactments, it is trite that the provisions of the latter of the two enactments will prevail and since the POCSO Act is a subsequent enactment, therefore, its provisions will prevail

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over the SC/ST Act. Learned AAG, Haryana, has not been able to bring any material on record to the contrary. In view of the aforecited citation, this Court is also of the considered opinion that the instant petition cannot be considered to be non-maintainable.

7. However, so far as the prayer made by the petitioner for releasing him on bail while taking into consideration, the contentions as raised is concerned, I am of the considered opinion that the same do not deserve acceptance. Undoubtedly, the victim had not named the petitioner as the person who had subjected her to aggravated penetrative sexual assault at the first instance and his name has been taken for the first time on 24.05.2022 when she had filed a complaint before the police but on that ground simplicitor, it cannot be assumed that the allegations so levelled by the victim are false. Copy of her sworn deposition has been placed on record of this petition as Annexure P-6 and on a perusal of the same, it is apparent that she has levelled specific and serious allegations against the petitioner of subjecting her to repeated acts of rape/aggravated penetrative sexual assault. After hearing the contentions as raised by learned counsel for the petitioner, I am of the considered opinion that no substantial or drastic change from the date of dismissal of the previous petition as moved by the petitioner has been pointed or made out from the pleas taken by the petitioner. Merely the extended/prolonged period of incarceration or examination of some material witnesses is not a ground to extend any such benefit. Keeping in view the nature and gravity of the offences, in my considered opinion, it is not a fit case to enlarge the petitioner on bail, especially in view of the fact that no

drastic or material change in the circumstances has been made out. In view of the discussion as made above, but without meaning to make any comment on the merits of the case, it is observed that the petition does not deserve to be allowed. Hence, the same is dismissed.

8. Since the main petition has been dismissed, pending application, if any, is rendered infructuous.

[MANISHA BATRA]
JUDGE

13th December, 2024
Parveen Sharma

1. Whether speaking/ reasoned

:

Yes / No
2. Whether reportable

:

Yes / No