

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M No.38402 of 2020 (O&M)
Decided on: 25.11.2020

Shakeel

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Mr. Gourave Bhayyia, Advocate
for the petitioner.

Mr. Deepak Kumar Grewal, DAG, Haryana.

Mr. Salim Mohd., Advocate
for the complainant.

ARVIND SINGH SANGWAN, J.

Prayer in this petition is for grant of anticipatory bail to the petitioner in FIR No.198 dated 01.06.2020 registered under Sections 363, 366-A, 188, 506 of the Indian Penal Code, 1860 (in short 'IPC'), 6 and 19 of the POCSO Act and 67-B of the Information Technology Act, at Police Station Ferozpur Jhirka, District Nuh.

Counsel for the petitioner has submitted that the FIR was registered at the instance of the father of the victim with the allegation that he is a sugar patient and remained admitted in hospital for many days. Taking advantage of his absence, one Janista lured her minor daughter 'P' aged about 15 years that her brother-in-law wants to talk to

her. Thereafter, the petitioner – Shakeel and the co-accused Shamshad started talking to her, in his absence and on 05.02.2020, on the asking of Janista, both the accused came to his house and lured his daughter and took her to a near forest where they both committed rape on his daughter against her wishes. In this process, they have even, taken obscene photographs of his daughter, on their phone and some of her photographs were made viral on the internet. Again on this pretext and by threatening, the victim was repeatedly raped by them and because of fear, his daughter did not disclose anything to them. On 29.05.2020, when his daughter suddenly became unwell, she was taken to a doctor, who informed that she is pregnant by 3-4 months. When the complainant and his wife enquired about it from the victim, she told about the rape committed by the accused persons. The accused was called on his phone number, as mentioned in the FIR, by the complainant and again, the accused had threatened his daughter and stated that they will get her pregnancy aborted. On this pretext, the FIR was registered on 01.06.2020.

Counsel for the petitioner has argued that the petitioner is a married person having 02 children and he has no connection with the commission of offence as he has been falsely implicated in the case. It is further submitted that even the photographs of the victim are with the co-accused Shamshad, who has uploaded the same on his Facebook page.

Counsel for the petitioner has also submitted that the FIR has been registered after a long delay and the petitioner is a truck driver

and he is a seldom reside in the village.

In reply, counsel for the State assisted by counsel for the complainant have strongly opposed the prayer for bail. It is argued by counsel for the State that in her statement under Section 164 Cr.P.C., recorded before the Illaqa Magistrate, the victim 'P' has stated that her age is 14 years and she specifically named the petitioner and Shamshad who had taken her to forest by luring her and then committed rape and even taken her photographs on the mobile. They further threatened that if she informed about the incident to any person, they will make her photographs viral on internet and on that pretext, they repeatedly called her and committed rape. She did not inform about this fact due to fear. When she became pregnant by 04 months, the accused even told that they will give tablets for aborting the pregnancy. When her parents came to know about it, they got her ultrasound conducted and came to know about the pregnancy and on their asking, she informed them about the rape committed by the accused – Shamshad and Shakeel.

Counsel for the State has further argued that considering the tender age of the girl, as she was put under threat of life by the petitioner and his co-accused, therefore, she did not disclose the fact of rape till her parents came to know about her pregnancy and thus, there is no delay in registration of the FIR.

Counsel for the State has even submitted that the mother of the accused namely Habila even filed one CRWP No.6230 of 2020, praying for protection of her life and liberty, which was disposed of on 21.08.2020, noticing the fact that the son of the petitioner – Habila, is an accused in the present FIR and the said petition was disposed of with

a direction to the Superintendent of Police, Mewat, to look into her representation. It is further submitted that the petitioner is an accused named in the FIR and therefore, the police needs his custodial interrogation in order to know about the allegation in the FIR i.e. the photographs of the victim taken on the mobile phone and submitted that considering the gravity of the offence, the petition may be dismissed.

Counsel for the complainant has additionally argued that the victim has specifically named the petitioner along with the co-accused Shamshad, as the accused persons, who have committed rape upon her.

Counsel for the complainant has further argued that the victim has given birth to a child on 05.11.2020 and presently, the child is in a Charitable Hospital/Society and the victim has serious apprehension to her life at the hands of the petitioner and his co-accused, who repeatedly threatened her and committed rape on the victim and she became pregnant.

Counsel for the complainant has also submitted that the father of the victim has even filed CRWP No.16169 of 2020, for issuance of a writ in the nature of mandamus directing the Deputy Commissioner and the Chief Medical Officer to grant permission to terminate the pregnancy of the victim. It is further submitted that in the writ petition, all the facts have been disclosed and the victim and her father, being very poor person, are under constant pressure by the accused persons and in this regard, even a complaint was given to the Superintendent of Police, for taking action against the present petitioner and the other accused. Counsel for the complainant lastly argued that

despite registration of the FIR, till date, no arrest has been made and the police is favouring the accused persons, who are influential.

The record of the aforesaid writ petition bearing CWP No.16169 of 2020, has been summoned.

As per the order dated 06.10.2020, a report was called from the Chief Medical Officer, Nuh, about the health condition of the victim, who is 14 years and it was directed that the Chief Medical Officer, Nuh, will examine the victim and inform whether her health and safety allow to terminate the pregnancy, at this stage.

Later, on 16.11.2020, noticing the fact that the minor victim has already delivered a child, the said C.W.P. was adjourned to 26.11.2020.

After hearing the counsel for the parties and considering the serious allegations against the petitioner of committing rape with a minor girl aged 14 years, who became pregnant and delivered a child on 05.11.2020, I find no ground to grant the concession of anticipatory bail to the petitioner and accordingly, the present petition is dismissed.

However, considering the fact that a minor victim aged 14 years, remained under constant threat to her life since February, 2020, when the offence of rape was committed for the first time, till date, despite having given birth to a child, who is stated to be in a Charitable Hospital/Society at Faridabad, in view of the directions given by the Hon'ble Supreme Court in *Suo Motu Writ Petition (Criminal) No.24 of 2014*, initiated by the Hon'ble Supreme Court regarding granting compensation to rape victim reported as **2014(2) RCR (Criminal) 379**,

wherein the Hon'ble Supreme Court has held that the Court has a right to award interim compensation to the victim and further directed the State of West Bengal to provide adequate compensation for rehabilitation of the victim, I deem it appropriate to direct the Secretary, District Legal Services Authority, Mewat at Nuh as well as the Secretary, District Legal Services Authority, Faridabad, in whose jurisdiction the victim and the minor child is presently in a Charitable Hospital/Society, to award interim compensation to the victim.

It is also directed that the District Legal Services Authority, Mewat at Nuh will appoint a lady Counsellor, who will periodically conduct counselling of the minor victim for her rehabilitation and to take care of her health condition as she has become a mother at a very young age of 14 years.

The District Legal Services Authority, Mewat at Nuh as well as District Legal Services Authority, Faridabad will furnish a report in the month of May, 2021, about the action taken in this regard and the interim compensation provided to the minor victim as well as the arrangements made for the upbringing of the minor child.

In the meantime, the Superintendent of Police, Mewat at Nuh, is also directed to look into the threat perception to the family of the complainant as well as the minor girl/victim in the light of the judgment of Hon'ble Suupreme in "*Nipun Saxena and another vs Union of India and others*", 2019(1) RCR (Criminal) 334, wherein guidelines are issued for dealing with victims under POCSO Act, and furnish an affidavit about the investigation of the case to the Registrar General of this Court.

The Registry is directed to put the case along with the Status Report in the month of May, 2021, as and when the same has been received from the concerned District Legal Services Authorities.

(ARVIND SINGH SANGWAN)
JUDGE

25.11.2020

yakub

Whether speaking/reasoned

Yes/No

Whether reportable:

Yes/No



सत्यमेव जयते

