

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

CRM-M-25361-2018

Date of decision:- 12.10.2018

Jitender @ Bholu

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR.JUSTICE H.S. MADAAN

Present: Mr.S.S. Kharb, Advocate
for the petitioner.

Mr.Neeraj Poswal, AAG, Haryana.

H.S. MADAAN, J. (Oral)

This petition has been filed for the grant of regular bail to the petitioner – Jitender @ Bholu, an accused in FIR No.148 dated 9.3.2018, under Sections 354 IPC and 12 of POCSO Act, 2012, registered at Police Station Samalkha, District Panipat.

Briefly stated, the facts of the case as per the prosecution story are that the FIR in question was lodged by complainant Dharambir son of Kundan, resident of village Atta, Tehsil Samalkha, District Panipat, who in the written complaint submitted by him to Incharge, Police Post Samalkha submitted that his daughter (name withheld to protect her identity in view of Section 228-A IPC and as per the directions given by

the Hon'ble Apex Court in case titled State of Karnataka Vs. Puttaraja, 2004(1) RCR(Cri.) Supreme Court, 113 (SC) and referred to as *the prosecutrix*) aged about 17 years had gone to Government School, Bhapra for 12th class examination on 9.3.2018; that accused Jitender @ Bholu son of Ramesh, resident of village Mahra, District Sonipat, who is devar (brother-in-law) of elder daughter of the complainant entered into the class room, where the prosecutrix was sitting for examination and misbehaved with her giving her beatings trying to kidnap her; that the prosecutrix was rescued by students and staff present there; that Jitender @ Bholu had come in a Ecco vehicle accompanied by 4-5 persons having weapons. He sought taking of action against them.

On the basis of such complaint, formal FIR was registered. The investigation in the case started. The statement of the prosecutrix was recorded by the police. Thereafter, her statement under Section 164 Cr.P.C. was also got recorded from SDJM, Samalkha. Accused was arrested in this case on 10.3.2018. He by making disclosure statement got recovered ECCO vehicle, which was taken into possession. Subsequently, the complainant and the prosecutrix got recorded supplementary statement stating that only Jitender @ Bholu was present there and 4-5 persons were not there and they were not having arms. On completion of investigation, challan was prepared and filed in the Court adding offence under Section 10 of the POCSO Act, whereas Section 12 thereof was deleted.

After presentation of the challan, charge against the accused has been framed and the trial is going on. The petitioner/accused had moved an application for regular bail in Court of Sessions at Panipat but

was unsuccessful as the same was dismissed vide order dated 11.5.2018 passed by learned Additional Sessions Judge, Panipat, as such, he has approached this Court for grant of the similar relief.

Notice of the petition was given to the State and State counsel has put in appearance.

I have heard learned counsel for the petitioner and learned State counsel besides going through the record.

Learned counsel for the petitioner has contended that the petitioner and the prosecutrix were known to each other for last two years. They both liked each other and wanted to marry but the complainant was not ready for that. Both of them had taken poison about 1 ½ years earlier for that reason but had survived and both the families had agreed to marry them after the prosecutrix attained the age of 18 years, which she has now completed on 23.4.2018; that as a matter of fact, no such incident had taken place; that the petitioner had taken the prosecutrix to the examination centre, to which the complainant objected and then lodged the FIR.

Though initially the complainant had stated that the accused accompanied by 4-5 armed persons had come and misbehaved with the prosecutrix while she was sitting in the examination hall and trying to kidnap her but later on by making the supplementary statements the factum of accused being accompanied by 4-5 armed persons has been denied. The petitioner was arrested on 10.3.2018. The trial is at preliminary stage and its conclusion is likely to take some time. The petitioner on one side and the prosecutrix and her father - the complainant

on other side are related to each other. Further, detention of the petitioner/accused shall not serve any purpose. Therefore, it shall be in the fitness of things, if regular bail is granted to the petitioner.

Accordingly, the petition is allowed. The petitioner be admitted to bail during the pendency of the trial, subject to his furnishing bail bonds and surety bonds to the satisfaction of the trial Court/Chief Judicial Magistrate, Panipat, subject to the following conditions:

- (i) he shall appear in the Court on each and every date of hearing;
- (ii) he shall not give any threat or intimidation to the prosecution witnesses; and
- (iii) he shall not leave India without prior permission of the Court and shall surrender his passport, if he has got one, otherwise to furnish affidavit in that regard.

In addition to that the trial Court may impose any term and condition found suitable to ensure that the petitioner does not abscond and interfere in the trial.

In case the petitioner violates any term and condition on which the bail has been granted to him, the prosecution would be entitled to apply for cancellation of bail.

12.10.2018
Brij

(H.S. MADAAN)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No