

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

CRM-M No. 29087 of 2018

DATE OF DECISION :- September 12, 2018

Ravinder

...Petitioner

Versus

State of Haryana

...Respondent

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

Present:- Mr. Ankur Lal, Advocate for the petitioner.

Mr. Neeraj Poswal, AAG, Haryana.

This petition for regular bail has been filed by petitioner Ravinder, an accused in F.I.R. No. 85 dated 24.10.2017 for offences under Sections 354-A (2), 341, 451 IPC and Section 12 of POCSO Act and Section 3 of SC/ST Act (subsequently Section 376, 452 IPC and Section 8 of POCSO Act deleted) registered with Police Station Women, District Bhiwani.

Briefly stated the facts of the case, as per prosecution story, are that on 12.10.2017 at about 1.30 P.M., accused Ravinder running a Akhara (wrestling arena) near the house of victim behind Haluwas petrol pump, Bhiwani, went to the house of the victim aged about 13 years and a student of Central School, Paluwas, Bhiwani. Finding her alone at home the accused caught hold of complainant-prosecutrix from her hand and asked her to go along with him upstairs. The complainant-prosecutrix resisted, then the

accused told that he wanted to have sex with her. The complainant-prosecutrix ran away from there. The accused visited the house of the complainant-prosecutrix again in the evening. On 13.10.2017 complainant-prosecutrix consumed phenyl out of fear of the accused. Father of the complainant called father of the accused, who gave an assurance that such type of incident would not happen in future. On 24.10.2017 in the morning at about 6.15 A.M. while the complainant was going along with her father to board bus to reach school then on the way Ravinder intercepted them. Father of the complainant made a call to the police at number 100.

On the basis of statement of complainant-prosecutrix formal F.I.R. was registered. Statement of prosecutrix was got recorded under Section 164 Cr.P.C. Accused Ravinder was arrested in this case on 24.10.2017. Section 12 of POCSO Act was omitted and Section 8 of that Act was added. After completion of investigation, challan against the accused was submitted in the Court on 1.12.2017. The trial against the accused initiated after framing of charge. It is stated that out of 14 prosecution witnesses statement of 6 prosecution witnesses including the complainant have been recorded. During the examination of the complainant-victim on 9.4.2018, she levelled allegations of rape against the accused, therefore, an application under Section 216 Cr.P.C. was moved in the trial Court. The trial Court altered the charge framed against the accused vide order dated 18.12.2017 and fresh charge was framed under Section 376/452 IPC. Petitioner-accused had filed an application for regular bail which was dismissed, as such he has approached this Court craving for grant of similar relief. The request is being opposed by the State counsel.

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

The contentions put forward by learned counsel for the petitioner are that the petitioner is innocent and has not committed any offence. There is a delay of 12 days in reporting the matter to the police. In statement made by the prosecutrix to the police there are no allegations of rape. Further more the prosecutrix-complainant did not allege that rape was committed upon her by the petitioner in her statement under Section 164 Cr.P.C. and only during the trial she deposed regarding being subjected to forcible sexual intercourse at the hands of accused, as such she cannot be believed in that regard. Therefore, regular bail be granted to the petitioner. On the other hand learned State counsel has vehemently opposed the request.

After hearing the rival contentions, I find that petitioner is specifically named in the F.I.R. Though in the F.I.R. as well as statement under Section 164 Cr.P.C. of the complainant there are no allegations of rape but during the trial she while getting her statement recorded as PW1 and father of prosecutrix Ramesh Kumar appearing as PW3 levelled allegations of rape on prosecutrix by the petitioner. Although prosecutrix not making mention of rape at the hands of petitioner in her statement to the police and in her statement got recorded under Section 164 Cr.P.C. itself shake credibility of prosecution version to some extent but then the prosecutrix, being a young girl stated that she had been subjected to rape. In view of that application under Section 216 Cr.P.C. was filed, which was allowed.

The present accused is stated to be involved in another case F.I.R. No. 78 dated 15.3.2017. The trial against the petitioner is going on. The guilt shall be determined during the trial.

Keeping in view the gravity and seriousness of allegations, no case for grant of regular bail to the petitioner is made out, therefore, the petition stands dismissed.

(H.S. MADAAN)
JUDGE

September 12, 2018
p.singh

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No