

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

CRM-M-18569-2021

Date of Decision: 25.11.2021

Mandeep Sharma @ Gopi

..... Petitioner

Versus

State of Haryana

.....Respondent

CRM-M-38544-2021

Kuldeep @ Gaggi

..... Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Amit Chaudhary, Advocate, for the petitioners.

Mr. B.S. Virk, Deputy Advocate General, Haryana.

Rajesh Bhardwaj, J. (ORAL)

Matter has been taken up through video conferencing via Webex facility in the light of the Pandemic Covid-19 situation and as per instructions.

This order will dispose of two petitions bearing CRM-M-18569-2021 and CRM-M-38544-2021, as the both arise out of the same FIR.

Prayer in the present petitions is for grant of regular bail to the petitioners in a case FIR No.331 dated 23.11.2020, registered under Sections 120-B, 323, 370, 376-D, 366, 506 IPC and Section 3(2)(v) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, at Police Station Sadar Tohana, District Fatehabad.

As per factual matrix of the case, the FIR in question was

lodged by the prosecutrix, wherein, it was alleged that she is residing in a house on rent. The accused landlady alongwith 7 boys had taken her in car at Village Jamalpur Shekha, Tehsil Tohana, where all the accused, namely, Ravi, Gurlal, Gaggi, Sandeep Sharma, Sandeep, Kuldeep and one another, whose name she did not know committed rape upon her one by one. It was further alleged that the landlady Daljit Kaur allured her and took her to village Jamalpur Shekha, where, rape was committed upon the prosecutrix and Rs.15,000/- was taken by her from the boys for doing wrong act. She alleged that she was thrashed and beaten. Request was made to lodge the FIR and take the legal action against the culprits. The petitioners, namely, Mandeep Sharma @ Gopi and Kuldeep @ Gaggi were arrested on 29.11.2020 and 30.11.2020. They approached the learned Additional Sessions Judge, Fatehabad for grant of bail, which was declined by him vide order dated 8.4.2021 and 19.8.2021. Aggrieved by the same, the petitioners approached this Court by way of filing the present petitions.

It has been contended by learned counsel for the petitioners that they have been falsely implicated in this case. He submits that from the allegations made in the FIR, it is apparent that the prosecutrix is of the age of the majority and the allegations against the present petitioners are totally concocted. He submits that in all there were 7 accused, out of which two accused, namely, Baru and Lakhbir @ Soni were already granted regular bail by the trial Court. Learned counsel for the petitioners submits that from the bare reading of the FIR, it is evident that all the 7 accused are mentioned by name, whereas in the statement under Section 164 Cr.P.C. recorded on 24.11.2020 subsequent to the FIR, names of all 7 accused are not mentioned. He vehemently contends that now the prosecutrix has been

examined before the trial Court and she has not supported that case of the prosecution, which is evident from the copy of her statement placed on record as Annexure R-3. He has drawn the attention of this Court to her deposition, wherein, the prosecutrix has deposed that she had seen accused Baru, Lakhbir @ Soni, Mandeep @ Gopi, Kuldeep @ Gaggi and Gurlal present in Court. She deposed that they were not those persons, who committed rape upon her repeatedly and sexually exploited her. Learned counsel for the petitioner submits that as the prosecutrix has turned hostile, the incarceration of the petitioners is unwarranted, hence, they deserve to be enlarged on bail.

Learned State counsel has opposed the submissions made by learned counsel for the petitioners. He submits that the petitioners were specifically named in the FIR and thereafter in the statement recorded under Section 164 Cr.P.C. as well. The prosecutrix has deposed that there were 7 accused, who raped her. However, he candidly acknowledges that the prosecutrix has not supported that case of the prosecution before the trial Court. He submits that out of 16 prosecution witnesses, 7 witnesses have already been examined.

Heard learned counsel for the parties.

The petitioners are behind bars since 29.11.2020 and 30.11.2020. There were allegations against the petitioners in the FIR, however, there is no gainsaying that the prosecutrix, who is major, has not supported that the case of the prosecution and has categorically deposed that the accused present in the Court are not the ones, who committed rape upon her. In all there are 16 prosecution witnesses, out of which only 7 witnesses have been examined. The veracity of the allegations would be established

on the conclusion of the trial on the basis of the evidence to be led by the parties. However, in the overall facts and circumstances of the case, I am of the opinion that learned counsel for the petitioners has been able to make out a case for grant of regular bail to the petitioners. Accordingly, the present petitions are allowed and the petitioners are ordered to be released on bail to the satisfaction of the concerned trial Court/Duty Magistrate. Nothing said herein shall be treated as an expression of opinion on the merits of the case.

(RAJESH BHARDWAJ)
JUDGE

25.11.2021
sharmila

Whether Speaking/Reasoned	:	Yes/No
Whether Reportable	:	Yes/No