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

CRM-M-23921-2021

Date of decision : 26.10.2021

Lovelesh Kumar

.... Petitioner

Versus

State of Punjab

.... Respondent

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

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

Ms. Sakshi Bakshi, AAG, Punjab.

RAJESH BHARDWAJ, J.

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

Prayer in this petition under Section 439 Cr.P.C, is for grant of regular bail in case FIR No.123 dated 16.11.2017, under Sections 376, 406, 420 of the Indian Penal Code and Section 25/27/54/59 of the Arms Act, 1959 (Sections 25/27 of the Arms Act added later on), at Police Station Badhni Kalan, District Moga.

As per the factual matrix of the case, the present FIR was registered by the prosecutrix wherein the allegations pertains to exploiting her for sending her to Canada, the accused Varinder Singh @ Velly allured

her and demanded Rs.15,00,000/-. The prosecutrix believed Varinder Singh @ Velly and thereafter, the matter was settled for an amount of Rs.13,50,000/-. Varinder Singh @ Velly without her consent allured and threatened her. He kept on siphoning the money from the prosecutrix and thereafter blackmailed her and rape was committed. The FIR was lodged with a prayer to take action against the culprits. Thereafter, the supplementary statement of the prosecutrix was also recorded on 5th December, 2017 and the name of the present petitioner also cropped up. The petitioner was declared proclaimed offender by the Court on 23rd January, 2019 and thereafter, he was arrested on 22nd May, 2020. Challan was presented. The petitioner approached the learned Additional Sessions Judge, Moga for grant of bail, however, the same was declined vide her order dated 23rd April, 2021.

Aggrieved by the same, the petitioner approached this Court by way of filing the present petition.

It has been contended by learned counsel for the petitioner that the petitioner is neither named in the FIR nor any allegations are made against him and he has been falsely implicated in the FIR. He submits that in all, there are five accused, out of which, two similarly situated have already been granted bail. He submits that the innocence of the petitioner is evident from the fact that the prosecutrix is examined by the prosecution as PW-1 and during her examination, she has deposed before the trial Court that the accused present in the Court are not the same persons whom she had mentioned in her statement under Section 164 Cr.P.C. She even refused to identify the accused present in the Court and was declared hostile.

Learned counsel for the petitioner submits that the prosecutrix is the star witness of the prosecution and once she has refused to identify the accused, incarceration of the petitioner is a futile exercise. He further submits that the similarly situated co-accused are already on bail and thus, the petitioner deserves to be enlarged on bail.

On the other hand, learned State counsel opposed the submissions made by learned counsel for the petitioner and submits that the petitioner was declared proclaimed offender and he was arrested subsequently. He submits that there are serious allegations against the petitioner and thus, he does not deserve the concession of bail. However, he candidly affirms that the factual aspect that the prosecutrix has not supported the case of the prosecution and the similarly situated co-accused have been granted bail. He further submits that in all, there are 28 prosecution witnesses, out of which, 01 witness has been examined.

I have heard learned counsel for the parties and perused the record.

As per the arguments raised and the material on record, it is evident that the similarly situated co-accused of the petitioner have been granted bail. The prosecutrix has not supported the case of the prosecution and has been declared hostile. Petitioner was arrested on 22nd May, 2020 and trial would take some more time for its conclusion. In the overall facts and circumstances of the case, this Court finds that learned counsel for the petitioner has succeeded in making out a case for bail to the petitioner. The present petition is allowed and the petitioner is ordered to be released on bail on his furnishing bail/surety bonds 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.

26.10.2021
m. sharma

(RAJESH BHARDWAJ)
JUDGE

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