

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

(223)

CRM-M-24586-2021(O&M)

Date of Decision: 16.09.2021

Gurpreet Singh @ Mithu

--Petitioner

Versus

State of Punjab

--Respondent

CORAM:- HON'BLE MR. JUSTICE RAJESH BHARDWAJ.

Present:- Mr. Prateek Pandit, Advocate for the petitioner.

Mr. M.S. Nagra, A.A.G., Punjab.

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.

CRM-30276-2021

Application is allowed as prayed for.

Copies of statements are taken on record as Annexures A-1 to A-3.

Main Petition

The present petition has been filed under Section 439 Cr.P.C seeking the benefit of regular bail to the petitioner in case FIR No.122 dated 6.5.2021 under sections 376, 342, 34 I.P.C and Section 4 of POCSO Act, registered at Police Station, Kotwali, Kapurthala, District Kapurthala.

Learned counsel for the petitioner vehemently contends that the petitioner has been falsely implicated in the present FIR. The author of the FIR is the mother of the victim, who had alleged that her husband is working as a Driver and she has 3 children. The youngest is the daughter,

who is 13 years of age and her date of birth is 20.7.2007. It was alleged that on 5.5.2021 her daughter was found missing from home. Thereafter, she was found and after reaching home she disclosed that Mithu son of Babbu had called her and forcibly took her in his house and committed rape with her in connivance with his uncle's son Ricky and that legal action be taken against them.

Learned counsel for the petitioner submits that false implication of the petitioner is writ large on account of the fact that the complainant i.e. mother of the victim, her father and thereafter the victim herself have been examined as PW-1, PW-2 and PW-4 respectively before the Trial Court. Copies of their testimonies have been placed on record which would show that none of these material witnesses have supported the case of the prosecution and thus have been declared hostile. Counsel submits that the material witnesses have failed to support the case of prosecution and therefore further incarceration of the petitioner is unwarranted.

On the other hand, learned State counsel has vehemently opposed the averments made by the counsel for petitioner and has submitted that the victim is a minor and thus no case for grant of bail is made out. However, learned State counsel candidly accepts the factual aspect that the material witnesses have not supported the case of prosecution.

I have heard learned counsel for the parties at length and have gone through the records carefully.

There is no gainsaying that the prosecutrix is a minor. The offence is under the POCSO Act, however, this Court is only seized of the prayer relating to grant of regular bail to the petitioner. The appreciation of the factual aspects is entirely the domain of the Trial Court for which this

Court would refrain from making any comment.

In the totality of circumstances and without making any observations on merits, present petition is allowed. Petitioner be enlarged on bail subject to satisfaction of Trial Court/Duty Magistrate, concerned. Nothing stated herein shall be treated as an expression on the merits of the case.

(RAJESH BHARDWAJ)
JUDGE

16.09.2021

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