

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

(231)

CRM-M-34266-2021(O&M)

Date of Decision: 08.09.2021

Abhishek & another

--Petitioners

Versus

State of Punjab

--Respondent

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

Present:- Mr. G.P.S. Pathania, Advocate for the petitioners.

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

Mr. J.S. Bajwa, Advocate for the complainant.

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.

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.200 dated 21.12.2020 under sections 376-D(A), 506 IPC and Section 6 of POCSO Act, registered at Police Station, Division No.1, District Pathankot.

Learned counsel for the petitioners vehemently contends that the petitioners are falsely implicated in the present FIR and no offence, as alleged, is made out against them. It has been further contended that the FIR in question was lodged by the victim herself on the allegations that when she was going towards the house of Manisha, petitioner Abhishek caught hold of her arms and forcibly committed rape upon her. She was also threatened to be killed. After completion of investigation challan was presented and the trial commenced. Counsel further contends that both the

petitioners are of 19 years of age and are behind bars since 21.12.2020. It has been further contended that prosecution has examined the victim as PW-1, a child witness namely Varun as PW-2, mother of the victim as PW-5 and neighbor Manisha as PW-8. Counsel has placed the testimonies of these witnesses on record, which would show that all these material witnesses have not supported the case of the prosecution and thus were declared hostile. Counsel further contends that as the material witnesses have not supported the case of prosecution, the false implication of both the petitioners is evident and hence their incarceration is unwarranted.

Learned State counsel, though, opposes the submissions made by counsel for petitioners on the premise that the petitioners are involved in heinous crime, however, he is not in a position to deny the factual aspect that the material witnesses have not supported the case of prosecution. Learned State counsel further submits that out of the total 16 prosecution witnesses 5 have been examined.

Learned counsel appearing on behalf the complainant also opposes the grant of bail on the premise that both the petitioners are involved in heinous crime.

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

There is no gainsaying that petitioners are behind bars since 21.12.2020. The material witnesses have not supported the case of prosecution.

In the overall facts and circumstances of the case, I find that the trial would take some time in its conclusion, whereas the material witnesses have already turned hostile in the trial court. In the totality of circumstances

and without making any observations on merits, present petition is allowed.
Both the petitioners 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

08.09.2021
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Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No