

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

CRM-M-34562-2021

Date of decision : 13.12.2021

Bijender @ Vijay Kumar

....Petitioner

Versus

State of Haryana

.... Respondent

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Aditya Sanghi, Advocate
for the petitioner.

Mr. Vishal Kashyap, DAG, Haryana.

RAJESH BHARDWAJ, J. (ORAL)

Prayer in the present petition is for grant of regular bail to the petitioner in case FIR No.44 dated 16.02.2021, under Sections 376, 452, 506 of the Indian Penal Code, registered at Police Station Ateli, District Mahendergarh, Haryana.

Succinctly, the facts of the case are that the prosecutrix, who is 57 years of age, lodged the present FIR, wherein, it was alleged that she was doing household work on 15th February, 2021 and cooking food at 10 pm, then Bijender i.e. the petitioner, came to her residence in a drunken condition. He bolted the door and after entering the house, took her into the room and raped her forcibly. When she resisted and made noise then he threatened her to kill her. Her husband was not present at home. After returning of her husband, she narrated the whole incident to him and thereafter, the present FIR was lodged. The petitioner was arrested on

16th February, 2021. He approached learned Additional Sessions Judge, Narnaul for grant of bail and the same was declined after hearing the parties vide order dated 30th July, 2021. Aggrieved by the same, the petitioner has approached this Court by filing the present petition for grant of bail.

Learned counsel for the petitioner has vehemently submitted that the petitioner is 37 years of age and in relation, is nephew of the complainant. He submits that the prosecutrix is an elder lady and the bare reading of the allegations would show that the allegations are totally false and frivolous and has been levelled against the petitioner deliberately in order to implicate the petitioner in a heinous offence. He vehemently contends that after lodging of the FIR, the statement of the prosecutrix was recorded under Section 164 Cr.P.C. on 16th February, 2021 and in comparison of the same with the initial version of FIR, same is totally different and the improved version. He has further drawn the attention of this Court to the medical conducted of the prosecutrix and he lay emphasis on the complete report appended. He asserts that the ocular version of the prosecutrix is not at all medically corroborated as no conclusion regarding resistance offered by the prosecutrix can be inferred from the same. He submits that this Court time and again requested the trial Court to examine the prosecutrix but the *zimni* order produced would show that despite having been granted five opportunities by the trial Court, the prosecutrix is not coming forward to depose before the trial Court. He submits that the conduct of the prosecutrix would show that the petitioner was falsely implicated and now she is trying her level best to prolong the trial in order to keep the petitioner behind the bars.

Learned State counsel opposes the submissions made by learned counsel for the petitioner. However, he submits that the prosecutrix was summoned for examination and she has not turned up for recording her statement before the trial Court.

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

Petitioner is behind the bars since 16th February, 2021. The prosecutrix is 57 years of age whereas, the petitioner is 27 years of age. Despite number of opportunities, the prosecutrix so far has not turned up for recording of her statement before the trial Court.

In the overall facts and circumstances of the case, it is apparent that the trial of the case will take sufficient time and no useful purpose will be served by keeping the petitioner in custody for such a long time. The veracity of the allegations can be established only after leading evidence before the trial Court. However, without commenting on the merits of the case, I find that learned counsel for the petitioner has succeeded in making out a case for grant of regular bail. Accordingly, the present petition is allowed and the petitioner is ordered to be released on bail on her 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.

13.12.2021
m. sharma

(**RAJESH BHARDWAJ**)
JUDGE

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