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

**CRM-M-10996-2021 (O&M)
Date of decision : 27.08.2021**

Munashib Khan

.... Petitioner

Versus

State of Haryana

.... Respondent

CORAM : HON'BLE MR.JUSTICE RAJESH BHARDWAJ

Present: Mr. Amit Kumar Jain, Advocate
for the petitioner.

Mr. B.S. Virk, DAG, 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.

Petitioner has approached this Court by way of filing petition under Section 439 Cr.P.C. seeking grant of regular bail in FIR No.65 dated 08.03.2020, registered under Sections 363, 366-A, 450, 506 of the Indian Penal Code, 1860 and Sections 4 and 6 of The Protection of Children from Sexual Offence Act, 2012 (for short 'the Act'), at Women Police Station NIT Faridabad, District Faridabad.

The FIR in question has been registered on the statement of the prosecutrix wherein she had alleged that the petitioner had forcibly committed rape upon her in her house. She has, however, alleged that thereafter, number of times the petitioner came to her house and she was raped and threatened as well. On the basis of the same, it was prayed that

legal action be taken against the petitioner. Investigation was conducted. Challan was presented and the trial commenced. Admittedly, the complainant/prosecutrix is the minor and hence, offence under Sections 4 and 6 of the Act were also added in the FIR and subsequently, in the challan.

Learned counsel for the petitioner submits that the petitioner was falsely implicated in the FIR and no offence as such was committed by the petitioner. He contends that the material witnesses i.e. the prosecutrix, her mother and her father were the prosecution witnesses and were examined before the trial Court as PW-1, PW-2 and PW-3 respectively. He has appended the examination of all these three witnesses with this petition which would show that all the three witnesses failed to support the case of the prosecution and turned hostile. He submits that the petitioner is behind bars since 11th March, 2020 and in view of the stage of the trial wherein the material witnesses did not support the case of the prosecution, the incarceration of the petitioner is unwarranted.

Mr. B.S. Virk, DAG, Haryana for the State, however, opposes the contentions raised by counsel for the petitioner that the petitioner is minor and the offence are under the POCSO Act. He submits that in all, there are 23 witnesses, out of which, 07 witnesses are examined. However, he is not in a position to deny that the material witnesses before the Court had not supported the case of the prosecution.

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

In view of the facts and circumstances of the case, the material witnesses have already turned hostile, the petitioner is behind bars since

11th March, 2020 and as only 7 witnesses are examined out of 23, the trial would take some time to conclude, I find that the petitioner be released on bail. 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.

(RAJESH BHARDWAJ)
JUDGE

27.08.2021
m. sharma

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