

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

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CRM-M-62-2021

Date of decision: 11.01.2021

Prem Kumar @ Baggi

... Petitioner

Vs.

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. Munish Kamboj, Advocate for the petitioner.

Mr. Abhinash Jain, DAG, Haryana
for the State-respondent.

SUVIR SEHGAL J. (ORAL)

The hearing of this petition has been taken up through video conferencing on account of outbreak of Covid-19 Pandemic.

Instant petition has been filed seeking grant of regular bail to the petitioner in case FIR No.133, dated 11.10.2020, registered under Sections 376(3), 376(AB) of Indian Penal Code, Section 6 of Protection of Children from Sexual Offences Act, 2012 (for short 'POCSO Act') and Section 3 of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 at Police Station Women, Sirsa.

As per the version of the prosecution, complaint was registered on the statement of prosecutrix, aged 11 years, wherein she stated that

she is a student of 6th Class and her father has died. On 11.10.2020, her mother and brother had gone to pluck cotton in the field and she was alone at home. Prem (present petitioner) who, she addressed as *Chacha*, got drunk and tried to rape her. When she raised an alarm, her brother and neighbour came on the spot and beat up Prem. She narrated the entire incident to her mother after she came back home. Upon registration of the FIR, the statement of the prosecutrix was recorded under Section 164 Cr.P.C. and the petitioner was arrested on 11.10.2020.

Counsel for the petitioner has argued that a false case has been registered against the petitioner due to political enmity and there is no incriminating material with the prosecution to implicate him. Counsel urges that there is no allegation of sexual penetration by the petitioner and the provisions of Section 376 and POCSO Act are not attracted. He further has placed reliance upon Panchayati compromise, dated 13.11.2020, Annexure P-3 and affidavit, dated 20.11.2020, Annexure P-2 executed by the mother of the prosecutrix to contend that no incident as alleged ever took place.

Opposing the petition, State counsel upon instructions from Inspector Seema, has submitted that not only the statement of the prosecutrix under Section 164 Cr.P.C., but even in the medico-legal report, the doctors have opined that the possibility of sexual assault cannot be ruled out. Upon instructions, State counsel has urged that during investigation, it transpired that there was a tremendous pressure from the villagers on the family of the prosecutrix to settle the matter.

Counsel further submits that it has also come on record that the accused-petitioner is a paramour of the mother of the victim.

I have considered the rival submissions of the parties.

Since the investigation agency has found that the petitioner-accused is a paramour of the mother of the victim, the possibility of her having executed the affidavit, Annexure P-2 to save his skin, cannot be ruled out. Still further, on the basis of the submission made by the counsel for the State, this Court has no hesitation in discarding the Panchayati compromise and affidavit signed by the mother of prosecutrix, which appears to have been entered under the pressure exerted by the villagers.

The prosecutrix is a minor of 11 years of age. The allegations levelled by her are very specific. She has named the accused-petitioner in the FIR which she has duly supported in her statement recorded before the Magistrate. Hon'ble Supreme Court in *State of Punjab Vs. Gurmeet Singh*, (1996) 2 SCC 384 has held that the evidence of victim in cases of sexual assault etc. is enough for the conviction of the accused and the same does not require any corroboration. The Apex Court has placed the statement of a prosecutrix on a higher pedestal than that of an injured witness.

Keeping in view the above circumstances, the nature of allegations, gravity of offence and the fact that the prosecutrix is a young innocent girl and there is every possibility of the accused influencing the prosecutrix even before her testimony has been recorded, this court does

not deem it appropriate to grant regular bail to the petitioner.

The petition is, accordingly, dismissed.

It is clarified that any observation made hereinabove shall not be construed to be an expression on the merits of the case.

11.01.2021

pooja saini

(SUVIR SEHGAL)
JUDGE

Whether Speaking/Reasoned : Yes/No

Whether Reportable : Yes/No