

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

(220)

CRM-M-1647-2022

Date of Decision: 11.05.2022

Arbaz

--Petitioner

Versus

State of Haryana

--Respondent

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

Present:- Mr. Rohit Kumar, Advocate for the petitioner.

Mr. Neeraj Poswal, A.A.G., Haryana.

RAJESH BHARDWAJ.J (Oral)

The present petition has been filed under Section 439 Cr.P.C praying for grant of regular bail to the petitioner in case FIR No.86 dated 25.1.2021 registered under section 4 of POCSO Act and sections 376 and 506 I.P.C at Police Station, Model Town, Panipat, District Panipat.

As per facts of the case, present FIR was lodged by the Babita, who is mother of the victim. The sum and substance of the allegations in the FIR is that the date of birth of the elder daughter of the complainant is 15.6.2003. She was studying in 1st semester of B.Tech. Her daughter used to remain depressed and on her repeated asking she did not disclose anything to her, however, she finally disclosed that Arbaz son of Sadik i.e. the present petitioner entered the house on 15.12.2020 and made physical relations with her and threatened her that she would be eliminated in case she told anything to anyone. FIR was lodged to take legal action against the culprit.

The investigation commenced and the statements of the prosecutrix was recorded under section 164 Cr.P.C by the ACJM, Panipat on 27.1.2021. The investigating agency made an effort to conduct the

medical examination of the prosecutrix, however, she refused to give her consent for the same. Petitioner was arrested on 30.1.2021. He approached learned Fast Track Court, POCSO, Panipat for grant of bail, however, after hearing the parties, the same was declined vide order dated 26.5.2021. Aggrieved by the same petitioner has approached this court for grant of bail.

Learned counsel for the petitioner has vehemently contended that the petitioner has been falsely and frivolously implicated in the present case. It is submitted that though the victim is stated to be less than 18 years old, however, the allegations made in the FIR are totally concocted. He submits that the alleged occurrence took place on 15.12.2020, whereas the FIR was lodged on 25.1.2021 i.e. after a delay of about 40 days. He submits that the prosecutrix intentionally did not give her consent for the medical examination as she knew that the allegations made against the petitioner are false and frivolous. Counsel submits that petitioner has no criminal antecedents as he has never been involved in any such case. It is submitted that prosecutrix has been examined by the Trial Court as PW-2. He has placed on record her deposition made before the Trial Court, wherein she deposed that at the time of incident she was sleeping on the floor on a mattress while her mother and two younger sisters were also sleeping in the same row. Counsel submits that the allegation of committing rape on the knife point is impossible in view of the deposition made by the prosecutrix. He submits that even otherwise the victim and other material witnesses already stand examined by the Trial Court and as such there would be no apprehension by the prosecution that granting bail to the petitioner may result to prejudice the trial. It is submitted that in the overall facts and circumstances of the case petitioner deserves to be granted bail.

On the other hand learned State counsel has strongly opposed the submissions made by counsel for petitioner and submits that there are specific allegations against the petitioner. He submits that prosecutrix is a minor and even if it is assumed that she is a consenting party, the same has no legal sanctity in the eyes of law. However, he candidly acknowledges the fact that prosecutrix did not give her consent for the medical examination. He submits that out of the total 15 prosecution witnesses 6 have already been examined including the prosecutrix and complainant.

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

The prosecutrix is admittedly a minor. As per the allegations the alleged occurrence took place on 15.12.2020, however, the FIR was lodged on 25.1.2021. The victim did not give her consent for the medical examination. There is nothing on record to show that petitioner has criminal antecedents. The material witnesses already stand examined before the Trial Court. The veracity of the allegations levelled in the FIR would be assessed only after conclusion of the trial. In the overall facts and circumstances of the case, this Court finds that counsel for petitioner succeeds in making out a case for grant of bail to the petitioner.

In the totality of facts and circumstances and without making any observation on merits, present petition is allowed. Petitioner be enlarged on bail on his furnishing bail/surety bonds 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

11.05.2022

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