

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

(215)

CRM-M-4446-2022.  
Date of Decision:-31.05.2022.

Dalbir @ Kala Singh

.....Petitioner

Versus

State of Haryana

.....Respondent

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

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Present: Mr. J.S. Lalli, Advocate for the petitioner.

Mr. Neeraj Poswal, AAG, Haryana.

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**RAJESH BHARDWAJ, J. (Oral)**

Prayer in the instant petition is for grant of regular bail to the petitioner in FIR No.23 dated 12.04.2020 under Sections 323, 342, 354, 376-D, 452 and 506 of IPC, registered at Police Station Women, Assandh, District Karnal.

The adumbrated facts of the case are that the prosecutrix lodged FIR wherein it was alleged that she was married with Sandeep Verma in 2011. From last one year, she was living separately from her husband along with her two children. One Happy used to trouble and molest her. It was alleged that on 11.04.2020 at about 11.00 p.m. Happy and his friend Dalbir @ Kala Singh-petitioner entered her house scaling the wall and they forcible molested her. On her resistance, both committed wrong act with her. They also gave beating to her and her children as well.

The FIR was lodged with a request to take legal action against the culprits.

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On the commencement of the investigation, statement of the complainant under Section 164 Cr.P.C. was recorded. The petitioner was arrested on 05.05.2020. The Investigating Agency also took the samples for DNA sampling. The petitioner approached the learned Fast Track Court, Karnal, praying for grant of bail. After hearing the counsel for the parties, the same was declined by the learned Fast Track Court, Karnal, vide its order dated 22.12.2021. Aggrieved by the said order, the petitioner is before this Court for grant of regular bail.

It has been contended by the counsel for the petitioner that both the petitioner and the prosecutrix are of the age of majority. He submits that the prosecutrix is the mother of two children and the petitioner has been falsely and frivolously implicated in this case. He submits that during investigation, the samples were taken for DNA sampling and after the receipt of the DNA report, the samples taken did not match with the petitioner. He submits that the prosecutrix thereafter has been examined by the trial Court as PW-2. He submitted that though in the examination-in-chief, the prosecutrix reiterated her earlier version, however, during the course of cross-examination, she has not supported the case of the prosecution. He submits that the prosecutrix specifically deposed that both the accused i.e. Happy and Dalbir @ Kala Singh neither entered her house, nor committed any rape with her. He has submitted that the petitioner has no criminal antecedents and is behind bars from last more than two years. He further submitted that prosecutrix already stands examined and she has not supported the case of the prosecution and thus, the petitioner deserves the concession of bail.

On the other hand, learned counsel for the State has opposed

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the submissions made by the learned counsel for the petitioner. He submits that there are specific allegations against the petitioner made by the prosecutrix. He submits that the prosecutrix duly supported the case of the prosecution even while deposing before Magistrate in her statement recorded under Section 164 Cr.P.C. He further submits that while being examined as PW-2, the prosecutrix supported the case of the prosecution, in her statement in examination-in-chief. However, once she was recalled for her cross-examination, she retracted her statement made in the examination-in-chief. He submits that out of 12 prosecution witnesses only prosecutrix has been examined so far.

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

Admittedly, the petitioner and the prosecutrix both are of the age of majority. The allegations are levelled by the prosecutrix against two accused i.e. Happy and Dalbir @ Kala Singh-petitioner. During the course of investigation, the samples which are taken for DNA test were not matched as is evident from the DNA report. Though the prosecutrix supported the case of the prosecution in examination-in-chief however, the perusal of her deposition on her recalling for further cross-examination would reveal that she specifically deposed that the petitioner and the co-accused did not enter her house. She deposed that neither they teased her nor committed rape upon her. She further deposed that she was examined medico legally under the pressure of the police and her statement under Section 164 Cr.P.C. was also recorded under the pressure of the police.

The veracity of the allegations and counter-allegations would be assessed only after the conclusion of the trial and on the appreciation of

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the complete evidence adduced by both the sides. The trial of the case will take sufficient long time and no useful purpose will be served by keeping the petitioner in custody for such a long time. Without commenting anything on the merits of the case, this Court is convinced that the counsel for the petitioner succeeds 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 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**

**May 31, 2022.**

sandeep

Whether speaking/reasoned:-  
Whether Reportable:-

Yes/No  
Yes/No