

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

**CRM-M-6016-2022
Date of decision : 12.05.2022**

Nanak Singh **Petitioner**

versus

State of Punjab **Respondent**

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present :- Ms. Nupur Sood, Advocate
for the petitioner.

Ms. Sakshi Bakshi, AAG, Punjab.

RAJESH BHARDWAJ, J. (Oral)

Prayer in the present petition is for grant of regular bail to the petitioner in case FIR No.280 dated 10.09.2020, under Section 376-D of the Indian Penal Code; Section 6 of Protection of Children from Sexual Offences Act, 2012 and Section 67-B of the Information Technology Act, 2000, registered at Police Station Tripri Patiala, District Patiala.

As per the facts of the case, the present FIR was lodged by the victim (name concealed). The allegations made by the prosecutrix that about one month prior to lodging of the FIR, she had gone to purchase Maggi from her house to the shop of Nanak Singh i.e. the petitioner. On pretending that he was thirsty, he sent the prosecutrix for bringing the glass of water from his house. On his asking, she went to the house of Nanak Singh to bring a glass of water and found three boys namely, Vicky, Rajan and Lakhan Singh sitting in the house. She got perplexed and tried to run outside. However, Nanak Singh bolted the main gate of the house from outside and three boys committed rape with the prosecutrix and when she raised alarm, they threatened her to be

eliminated. It was alleged that all of them forcibly raped her in connivance and with the common intention. Being afraid, she did not inform the incident to her father and the accused kept her harassing. Hence, the FIR was lodged to take the legal action. After lodging of the FIR, the investigation commenced and the statement of the prosecutrix and that of the other witnesses were recorded. The prosecutrix was medically examined. The petitioner was arrested on 22.10.2020. He approached the Court of learned Additional Sessions Judge, Patiala praying for grant of bail. After hearing counsel for the parties, learned Additional Sessions Judge declined the same vide his order dated 19.05.2022. Aggrieved by the same, the petitioner before this Court has prayed for grant of regular bail by way of the present petition.

Learned counsel for the petitioner has vehemently contended that the petitioner is 75 years of age with no criminal antecedents and has been falsely implicated by the prosecutrix. She submits that the prosecutrix is alleged to be 17 years of age whereas, the petitioner is elderly man of about 75 years of age and the allegations on the face of itself are obnoxious. She submits that the occurrence in question has been alleged to be one month prior to the lodging of the FIR. She submits that there is no justification for the offence as alleged, not having been reported to the police. She submits that when the prosecutrix was medically examined, it was recorded that the sexual assault relates back to seven months prior to the examination. She submits that the prosecutrix is improving her statement at every stage and thus, making the case of the prosecution more doubtful. To buttress her arguments, she has submitted that the learned trial Court has already examined the

prosecutrix-victim as PW-1. The prosecutrix while deposing before the trial Court has not supported the case of the prosecution and hence, on the request of learned Public Prosecutor she was declared hostile. Counsel submits that the prosecutrix though a minor is the most material witness of the prosecution and once she herself does not support the case of the prosecution, the case of the prosecution stood falsified. She further submits that the material witnesses already stand examined and thus, there is no possibility of tampering with the prosecution evidence. She submits that petitioner is behind bars since 22.10.2020 and the material witnesses already stand examined and hence, his further incarceration is totally unwarranted and hence he deserves to be granted bail.

Learned State counsel however, has opposed the submissions made by counsel for the petitioner. She submits that the prosecutrix is minor and there are specific allegations against the petitioner and the other accused. She has submitted that the contradictions pointed out by the counsel for the petitioner are not material in nature and do not have any bearing on the case of the prosecution. However, she candidly acknowledges that the prosecutrix did not support the case of the prosecution. She further submits that in the facts and circumstances, no case for grant of bail to the petitioner is made out.

I have heard counsel for the petitioner and perused the record.

Apparently the petitioner is 75 years of age. He is allegedly running a shop in the vicinity of the residence of the prosecutrix. As per the allegations, the alleged incident has taken place one month prior to lodging of the FIR. The prosecutrix has already been examined and her

copy of deposition has also been placed on record. Perusal of the same would show that she has deposed that she did not identify the accused who were present through video conferencing and they had not committed any wrong act or rape upon her. She deposed that her statement under Section 164 Cr.P.C. was recorded under the pressure of some police officials.

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. The veracity of the allegations and counter- allegations would be assessed by the trial Court on the evaluation of the evidence to be produced by the respective parties. However, in the attending facts and circumstances, this Court finds that 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.

12.05.2022
m. sharma

(RAJESH BHARDWAJ)
JUDGE

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