

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

CRM-M-4899-2022

Date of decision : 07.02.2022

Harjinder Singh

..... Petitioner

versus

State of Punjab

..... Respondent

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present :- Mr. Karanjeet Singh Brar, Advocate
for the petitioner.

RAJESH BHARDWAJ, J.

Matter has been taken up through video conferencing via Webex facility in the light of the Pandemic Covid-19 situation and as per instructions.

This is the second petition filed by the petitioner praying for grant of anticipatory bail in case FIR No.0007 dated 08.02.2019, under Section 376 IPC of 1860 and Section 4 of POCSO Act, 2012 (later on added offence under Sections 376-D, 366-A, 506 IPC of 1860 and Section 6 of POCSO Act, 2012), registered at Police Station City Jalalabad, District Fazilka.

On the earlier occasion, the petitioner filed CRM-M-No.21476 of 2020 which was dismissed by this Court vide order dated 04.08.2020. Learned counsel for the petitioner has contended that petitioner has been falsely implicated in this case and at the time of dismissal of his first petition, the prosecutrix was not examined but now she has been examined before the trial Court and has been declared as hostile. He has also submitted that in the statement recorded under Section 164 Cr.P.C., the name of the petitioner was not mentioned and hence, identity of the petitioner is not established. He

submits that the petitioner is an Army Personnel and has been falsely roped in the present FIR. He was never called by the investigating agencies and even otherwise, due to his service conditions, he is being posted at different places and hence, there is no question of his absconding. He submits that in the facts and circumstances of this case, false implication of the petitioner is evident and hence, no case for his custodial interrogation is made out. However, he is ready to join investigation.

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

Admittedly, this is the second petition filed by the petitioner for grant of anticipatory bail. The FIR in question was registered on the statement of Onkar Singh. It was alleged that he has three daughters, the second daughter, who was aged 14 years, was learning sewing work from his Massi. On 05.02.2019, his daughter after taking lunch was going to boutique of his Massi and the moment his daughter reached near Bhate Vakil then Sandeep Singh came in his Alto Vehicle No.DL9CF6951, he made his daughter to sit in his car on the pretext of taking measurement of his mother who wanted to get a suit stitched. He took the vehicle from Dream Villa Palace towards kacha path of canal and when his daughter asked about this he threatened her to kill in case, she raised alarm. Rape was committed without her consent by Sandeep Singh. Thereafter, he called telephonically, his friends Varinder Singh and Harjinder Singh (petitioner) son of Roop Singh and all of them sat in the car. Thereafter, in the house of Mukhtiar Singh, Sandeep Singh again committed rape with his daughter without her consent. In the morning, all three accused took his daughter to Ferozepur and dropped her at Bus Stand, Ferozepur. On reaching home, his daughter told the whole story. Request was made to take legal action against the

culprits. On her recovery, her statement was recorded under Section 164 Cr.P.C. wherein, she mentioned that on 05.02.2019 at about 5:30 PM, when she was going from her house to farm, four boys with tied faces came in the car and forcibly made her to sit in the car. One boy committed forcible act with her. In the night, second boy also committed forcible act with her.

During investigation, co-accused Varinder Singh was arrested on 09.02.2019 while the petitioner was absconding. During the trial against Varinder Singh, victim turned hostile, however, the petitioner is absconding till date. It is evident that the challan was presented against the co-accused Varinder Singh and Court had seized of the matter and the trial commenced *qua* him only. Admittedly, this is the second petition for grant of anticipatory bail and the petitioner has not submitted himself to the custody of the investigating agency. No benefit of turning hostile of the victim *qua* co-accused Varinder Singh can be extended at this stage to the petitioner. The powers under Section 438 Cr.P.C. is extraordinary in nature. The allegations in the FIR are serious and falls under the category of heinous crime.

In the overall facts and circumstances of the case, this Court does not find any merit in the case. The petition, being devoid of any merits, is hereby dismissed.

(RAJESH BHARDWAJ)
JUDGE

07.02.2022
m. sharma

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No