

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

CRM-M-6056-2022

Date of decision : 14.07.2022

Karamjit singh @Kala

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM : HON'BLE MR.JUSTICE RAJESH BHARDWAJ

Present: Mr. L.S. Sidhu, Advocate for the petitioner.

Mr. Rakeshinder Singh Sidhu, AAG, Punjab.

RAJESH BHARDWAJ, J. (Oral)

The present petition is filed under Section 439 Cr.P.C. by petitioner Karamjit Singh @ Kala seeking grant of regular bail in case FIR No.88 dated 22.10.2019, registered under Sections 363, 366-A, 376, 506, 511 IPC and Sections 3 and 4 of Protection of Children from Sexual Offences Act, 2012 at Police Station Joga, District Mansa.

As per facts of this case the present FIR was lodged by the mother of the prosecutrix, wherein it was alleged that on 17.10.2019 at about 9:00 am when she was away from home her minor daughter i.e. victim aged 16 years and having low mental capability was at home for taking care of daughter of their neighbour Amrik Singh aged one and a half years. When she returned she found her daughter and the infant child were not at home. On their search she was told by her neighbour Amarjit Kaur that Kala Singh son of Charna Singh (petitioner) was seen taking away her daughter and infant on motorcycle. On their search they

went to nearby villages and she met them at about 1.30 p.m. at the bus-stand of village Rureke. On the asking her daughter told that Kala Singh took them on motorcycle on the pretext of getting them something to eat. He took her to an uninhabited place and by showing the dagger started imposing himself upon her. After hearing the cries of an infant child the neighbour go alerted and rushed to the place. On seeing them the accused escaped. The FIR was lodged against the accused and investigation commenced and thereafter the statement of victim was recorded under Section 164 Cr.P.C. The victim was produced before the learned Magistrate for recording her statement under Section 164 Cr.P.C. wherein she deposed that the accused had raped her as earlier she refused to go with him. After having been taken her away, he put off her *salwar* and threatened her from making noise. On her raising alarm he fled away from the spot, however he did not commit any other offence except, putting off her *salwar*. The petitioner was arrested on 23.10.2019. Learned counsel for the petitioner submits that he approached the learned Special Court Mansa praying for the grant of bail. After hearing both the parties the Special Judge declined the same vide order dated 08.10.2020.

Aggreived by this, the petitioner has approached this Court for grant of regular bail.

Learned counsel for the peititioner vehemently contends that the petitioner has been falsely implicated in this case and he is behind bars from the last about three years. He submits that the petitioner has been prosecuted for the offence of attempt to rape, however, the learned Special Judge has delcined his bail by wrongly

considering this as the offence of rape committed by the petitioner. He submits that during the trial the complainant and the prosecutrix both did not prefer to appear before the trial Court for their examination and hence, the learned trial court had to adopt the process of issuing the bailable warrants time and again. He has placed on record the zimine orders of the Court passed which would indicate that from 20.07.2021 onwards, the trial Court had been issuing the bailable warrants for securing the presence of both material witnesses i.e. The complainant and the victim but they did not appear. He submits finally both the witnesses are now examined yesterday i.e. 13.07.2021. He submit that both the witnesses have now supported the case of the prosecution, however, they intentionally remain absent from the Court only in order to prolong the incarceration of the petitioner and hence, deprived the petitioner from the right of speedy trial. He submits that even otherwise when the material witnesses already stands examined and the petitioner has completed almost three years behind bars there cannot be any apprehension projected against the petitioner for tampering with the prosecution evidences. He has also submit that the investigating agency constituted the Board of Doctors for conducting medical examination of the prosecutrix, however, the complainant i.e. the mother of the victim refused to give the consent and hence there is no medical conducted of the victim. He submits that the petitioner has no criminal antecedents and hence in the facts and circumstances of the present case the petitioner deserves to be granted bail.

Learned State counsel submits that the prosecutrix is minor and there are specific allegations against the petitioner for having

kidnapped the prosecutrix and thereafter making an attempt to rape her after taking her in an isolated place.

Heard.

It is apparent that the petitioner is behind bars since 23.10.2019. He is being prosecuted for the offence of attempt to rape of the minor. During the course of investigation no consent was given regarding conducting the medical of the victim. From 20.07.2021 it is apparent from record made available that both the complainant and the victim did not appear before the trial court for their examination for about one year despite having been issued the bailable warrants by the trial court for securing their presence. Finally both appeared and have been examined by the trial Court on 13.07.2022 as has been pointed out by learned counsel for the petitioner.

As per the submissions made by learned State counsel out of 22 prosecution witnesses 07 witnesses already stands examined which includes the complainant and the victim. There is nothing on the record to show that the petitioner has any criminal antecedents and thus except the present case he is not involved in any other case. The veracity of the allegations would be appreciated by the trial Court on the basis of evidence produced before it by the parties.

In the totality of the facts and circumstances of the case the trial of the case will take sufficient time to conclude and no useful purpose will be served by keeping the accused in custody for such a long period, I find that learned counsel for the petitioner succeeds in making out a case for grant of bail.

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 trial Court/Duty Magistrate. Nothing said herein shall be treated as an expression of opinion on the merits of the case.

(RAJESH BHARDWAJ)
JUDGE

14.07.2022

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