

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

(208)

CRM-M-6117-2022

Date of Decision: 29.08.2022

Sandeep Singh

--Petitioner

Versus

State of Punjab

--Respondent

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

Present:- Mr. J.S. Dhaliwal, Advocate for the petitioner.

Mr. Arun Luthra, D.A.G., Punjab.

Mr. Amritpal Singh, Advocate for the complainant.

RAJESH BHARDWAJ.J (Oral)

The present petition has been filed under Section 439 Cr.P.C seeking the benefit of regular bail to the petitioner in case FIR No.243 dated 19.8.2021 under sections 366, 376 IPC and section 4 of POCSO Act, registered at Police Station, Sadar Mansa, District Mansa.

As per factual matrix, the FIR in question was lodged by prosecutrix, wherein it was alleged that they were three sisters and her sister Lakshmi was married to Sandeep Singh @ Ravi i.e. the present petitioner. Her brother-in-law i.e. the present petitioner met with an accident 2 years ago and she was sent to her sister Lakshmi by her mother Paramjit Kaur. On 16.8.2021 she called her brother-in-law (petitioner) to pick her up from the bus stand and take her to house. Her brother-in-law came on motorcycle and took her to the house of his friend. She was threatened to remain quite. Thereafter, he molested her and kept her there for the whole night and raped her. The next day i.e. On 18.8.2021 he dropped her at the bus stand.

Thereafter she spent the night on the bus stand and informed her mother, who came and picked her up. Thereafter, present FIR was lodged to take legal action against the culprit.

The investigation commenced and prosecutrix was produced before the concerned Magistrate and her statement under section 164 Cr.P.C was recorded. She was also sent for medical examination by the investigating agency. Petitioner was arrested on 21.8.2021. He approached learned Addl. Sessions Judge, Fast Track Special Court, Mansa for grant of bail, however, after hearing the parties, the same was declined vide order dated 14.1.2022. Aggrieved by the same petitioner has approached this court for grant of bail.

Learned counsel for the petitioner vehemently contends that the petitioner, who is brother-in-law (Jija) of the prosecutrix has been falsely implicated in the present case on account of some misunderstanding in the family. He submits that prosecutrix is 17 years of age and from the reading of the allegations in the FIR shows that the same are totally improbable. He submits that prosecution has failed to prove any resistance to the alleged coercion by the petitioner while she was allegedly kept in the house of the friend of the petitioner. He submits that false implication of the petitioner is writ large from the very fact that the prosecutrix and her mother have been examined by the Trial Court as PW-1 and PW-2 respectively. Copies of their depositions have been placed on record. Counsel has invited attention of this court to the same. He submits that both these witnesses have not supported the case of the prosecution and hence have been declared hostile.

Counsel submits that case of the prosecution falls flat and hence further incarceration of the petitioner is unwarranted. It is submitted that petitioner has no criminal antecedents and even otherwise material witnesses have already been examined by the Trial Court. Thus there is no possibility of the petitioner influencing the material witnesses.

Learned counsel for the complainant has admitted the submissions made by counsel for the petitioner.

On the other hand, learned State counsel submits that prosecutrix is minor and there are specific allegations against the petitioner. He submits that the prosecutrix was medically examined and the samples were taken from her clothes and sent to FSL for DNA Test. As per report of DNA Test the samples were found matched with the petitioner. However, he candidly submits that both prosecutrix and her mother have been examined before the Trial Court and as they have not supported the case of prosecution, they have been declared hostile. It is submitted that in all there are 21 prosecution witnesses out of which 4 including the prosecutrix and her mother have been examined. He further submits that as per information provided to him petitioner is not involved in any other case.

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

Admittedly, petitioner is the brother-in-law (Jija) of the prosecutrix and is behind bars since 21.8.2021. The prosecutrix and her mother have already been examined by the learned Trial Court as PW-1 and PW-2 respectively and they have not supported the case of prosecution and thus declared hostile. Both these witnesses specifically deposed before the

Trial Court that petitioner neither committed any bad act with the prosecutrix nor she suffered any statement before the police. Out of the total 21 prosecution witnesses 4 including the prosecutrix and her mother have already been examined and therefore possibility of the petitioner influencing the material witnesses does not survive any more. The veracity of the allegations levelled against the petitioner would be assessed by the Trial Court only upon conclusion of the trial. This court would refrain itself from commenting on the merits of the case, as the allegations and counter allegations would be assessed only after evaluation of the complete evidence to be led by both the sides before the Trial Court. The trial would take sufficiently long time in its conclusion.

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

29.08.2022

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