

210 IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

CRM-M-6836-2022

Date of Decision: 26.08.2022

DURGA NAND

... PETITIONER

VS.

STATE OF PUNJAB

.. RESPONDENT

CORAM: HON'BLE MR. JUSTICE VIVEK PURI

Present : Mr. Suneet Pal Singh Aulakh, Advocate  
for the petitioner.

Ms. Ruchika Sabherwal, DAG, Punjab.

\*\*\*\*\*

**VIVEK PURI, J.(ORAL)**

The petitioner is seeking regular bail in case bearing FIR No.0133 dated 22.08.2021 under Sections 363 and 366-A IPC (Section 376-D IPC and Section 4 of POCSO Act added later on), registered at Police Station Sadar, Ludhiana.

Custody certificate has been placed on record.

Briefly, the FIR has been registered on the basis of the statement of the father of the victim, who is aged about 15 years and 04 months. It has been alleged that during the intervening night of 15-16/08/2021, the victim has been kidnapped by Vikram (co-accused) on the pretext of marriage.

Learned counsel for the petitioner contends that the victim was recovered and co-accused-Vikram was arrested on 16.10.2021. The petitioner is maternal uncle and Sanjay Tiwari is the father of Vikram (co-accused). The allegations against the petitioner are only to the effect that he alongwith co-accused had taken the victim away and she was locked in a room. No allegation of commission of rape has been attributed against the petitioner. Even as per the report of Chemical Examiner, no semen was detected on the vaginal swabs. The prosecutrix and her father have been examined. Out of 23, only 02 witnesses have been examined so far. Even while appearing in the witness box, the prosecutrix during the course of her cross-examination has given an improved version imputing allegation of commission of rape against the petitioner.

Learned State counsel has mainly opposed the bail application on the score that the petitioner had facilitated the kidnapping which provided occasion to the co-accused to commit rape upon victim. Moreover, in the cross-examination of the victim, it is also emerging that the petitioner has also subjected her to sexual intercourse.

The evidentiary value of the statement of the victim, wherein, she has imputed allegation of commission of rape against the petitioner during the course of cross-examination will be adjudicated during the course of trial. Suffice is to say that there is no allegation with regard to commission of rape attributed against the petitioner in the statements under Section 161 Cr.P.C. or 164 Cr.P.C. Even no semen has been detected from the vaginal swabs and no male DNA profile could be recovered from the vaginal swabs of the victim. The petitioner is in custody for a period of 10 months and 08 days and not involved in any other case. He is the maternal uncle of Vikram (co-accused) against whom, the allegations with regard to kidnapping and rape have been attributed. Even, the allegation of rape has been attributed by the victim upon Sanjay Tiwari in her statement under Section 161 Cr.P.C.. Significantly, no such allegation of rape has been attributed to the petitioner in the statement of the victim recorded during the course of investigation. The statement of the victim and her father have been recorded during the trial. Consequently, it cannot be said that the petitioner, in any manner, can make an attempt to win over or influence the witnesses. Only 02 out of 23 witnesses have been examined so far. The conclusion of trial is likely to take some time and no fruitful purpose will be served by detaining the petitioner behind the bars.

In such circumstances, sufficient grounds are made out to extend the concession of bail to the petitioner. Accordingly, without making any observation on the merits of the case, the present petition is allowed and petitioner is ordered to be released on bail, subject to his furnishing bail/surety bonds to the satisfaction of concerned trial Court/Chief Judicial Magistrate//Duty Magistrate.

**26.08.2022**  
smriti

**(VIVEK PURI)**  
**JUDGE**

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