

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

(225)

CRM-M-8183-2022(O&M)
Date of Decision: 02.03.2022

Shubhash Kumar @ Shubham Kumar

--Petitioner

Versus

State of Punjab

--Respondent

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

Present:- Mr. C.S. Rana, Advocate for the petitioner.

Mr. M.S. Dullat, Addl. A.G., Punjab.

RAJESH BHARDWAJ.J (Oral)

CRM-6935-2022

Application is allowed as prayed for.

Main Petition

The present petition has been filed under Section 439 Cr.P.C for grant of regular bail to the petitioner in FIR No.243 dated 9.8.2021 registered under Sections 376, 506 IPC and Section 4 of POCSO Act at Police Station, Division No.8, Ludhiana.

As per facts of the case, present FIR was lodged by the prosecutrix herself. The crux of the allegations in the FIR is that the prosecutrix came in contact with one Deepak, who started sending her Whatsapp messages. Thereafter they used to chat everyday. On 7.8.2021 at about 11 PM prosecutrix went alone to Basant Restaurant, where Deepak met her. He gave the prosecutrix water and ice-cream but she refused to eat the same. Thereafter, Deepak took the prosecutrix to Hotel Silver Hug, where he forcibly established physical relations with her. Thereafter, she was left alone and in the morning at about 10.30 AM she made a call on mobile number 9876300051 and then she came to know that the said number belonged to one Shubham i.e. the present petitioner and there was

no boy by the name of Deepak. On that day she came to know that the name of the boy is Shubham Kumar and not Deepak. A request was made to take action against the culprit.

The investigation commenced and statement of the prosecutrix under Section 164 Cr.P.C was recorded, wherein allegations were made against the present petitioner. Petitioner was arrested on 10.8.2021. He approached learned Addl. Sessions Judge, Fast Track Court, Ludhiana for grant of bail, however, after hearing the parties, the same was declined vide order dated 8.2.2022. Aggrieved by the same petitioner has approached this court for grant of bail.

Learned counsel for the petitioner has vehemently contended that the prosecutrix is marginally less than 18 years and on that account the petitioner has been booked in a heinous offence. Counsel submits that a bare perusal of the FIR would reveal that the petitioner was not even named in the FIR. However, after due deliberations the prosecutrix alleged that there was no boy by the name of Deepak and the same was Shubham. He submits that even the allegations in the statement recorded under Section 164 Cr.P.C are false and frivolous and made after due deliberations. Counsel submits that the false implication of the petitioner is strengthened from the fact that now the prosecutrix has been examined before the Trial Court. Counsel has appended the testimony of the prosecutrix and draws the attention of this Court to the same. The deposition of the prosecutrix before the Trial Court would read that she never got recorded in her statement that Deepak was Shubham. She did not identify the accused present in the court. She further deposed that neither the petitioner committed any rape with her nor intimidated her. It is further deposed that

accused, who was present in the court was not Mohan, who met her at Basant Restaurant. It is further deposed that she could identify Mohan and Bhupinder Singh if they were brought before her. She disowned her statement made before the police and stated that the statement under Section 164 Cr.P.C was made under the pressure of the police. On her deposition the learned P.P made a request to cross-examine her as she was concealing the facts. On her cross-examination by the learned P.P she deposed that it was wrong to suggest that in her statement Ex.PA she referred Deepak as Shubham, who was present in the court. She denied the suggestion that Deepak and Shubham were the same person, who committed rape with her. Counsel for the petitioner submits that as the prosecutrix herself has not even identified the petitioner as the real accused, further incarceration of the petitioner is totally unwarranted and he deserves to be enlarged on bail.

On the other hand, learned State counsel submits that prosecutrix is a minor and even if any consent is contended on her part that would have no legal sanctity in the eyes of law. However, he candidly acknowledges the fact that the prosecutrix has been examined and she has not supported the case of the prosecution on the material facts. He submits that in all there are 19 prosecution witnesses out of which 2 including the prosecutrix have been examined.

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

Admittedly, the author of the FIR is prosecutrix herself, who had levelled the allegations of rape against one Deepak. She further made allegations against the petitioner in her statement under Sections 161 Cr.P.C and 164 Cr.P.C recorded subsequently. It was also alleged by her that

Deepak named in the FIR was in fact Shubham. However, as evident from her cross-examination before the Trial Court, she has disowned all her earlier statements and deposed that petitioner was not the person who committed rape with her. Veracity of the allegations would be assessed by the Trial Court upon conclusion of the trial. This Court finds that counsel for petitioner succeeds in making out a case for grant of bail to the petitioner.

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

02.03.2022

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