

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

CRM-M-8794-2021

Date of decision : 13.05.2022

Vishnu

.....Petitioner

versus

State of Haryana

..... Respondent

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present :- Mr. Vikas Bishnoi, Advocate
for the petitioner.

Mr. Neeraj Poswal, AAG, Haryana.

RAJESH BHARDWAJ, J. (Oral)

Prayer in the present petition is for grant of regular bail to the petitioner in case FIR No.415 dated 23.06.2020, under Sections 323, 34, 354-D, 365, 376(2)(n), 376-D of IPC (during investigation Sections 365, 376-D, 34 of IPC has been deleted and Section 363 of IPC has been added), registered at Police Station Sadar Hisar, District Hisar.

As per the facts of the case, the present FIR was lodged by the prosecutrix (name concealed). It was alleged that she is resident of Juglan and studied upto 12th standard. They were four brothers and sisters and she was the youngest of four. On the date of occurrence at about 3-4 o'clock in the night, when she was sleeping, 3-4 boys entered her house. One of them was Vishnu (petitioner) son of Pappu and second was Naveen son of Satpal whereas, she could not recognize rest of the two. However, she could recognize them if they are produced before her. It was alleged that all the four boys forcibly took her to the house of Vishnu. Thereafter, two boys caught hold of her hands and Naveen torn away her clothes whereas, Vishnu committed rape twice with the

prosecutrix without her consent. Thereafter, her mother Shankuntala and sister Bhateri came to search her and found her lying unconscious. When her mother enquired, one of the boys gave brick bat blow upon her and slapped her sister Bhateri. Her father was given a stick blow by one of those boys. Thereafter, the family took her to the police station and the present FIR was lodged. On lodging of the FIR, the investigation commenced and the statement under Section 164 Cr.P.C. of the prosecutrix was recorded and she was medically examined. The investigation was completed and challan was presented. On conclusion of the investigation, offence under Sections 376-D, 365, 34 of IPC were deleted. Petitioner was arrested on 24th June, 2020. He approached the Court of learned Additional Sessions Judge, Fast Track Special Court, Hisar. After hearing counsel for the parties, learned Additional Sessions Judge declined the same vide order dated 19.01.2021. Aggrieved by the same, petitioner is before this Court praying for grant of regular bail.

Learned counsel for the petitioner vehemently contends that the prosecution of the petitioner in the present petition is nothing but an abuse of the process of the Court. He submits that the petitioner and the prosecutrix both are of the age of majority and from the bare reading of the allegations in the FIR, there cannot be any truth in the allegations as alleged. He submits that the prosecutrix categorically alleged about her abduction by four boys when she was asleep with the family and thereafter, have been committed rape upon her when all the family members were present. He submits that on the conclusion of the investigation, the challan was presented only against the petitioner which would show the false and frivolous FIR lodged by the prosecutrix. He

submits that it is on account of the same that the offences under Sections 376-D, 365, 34 of IPC were deleted by the Investigating Agencies. He submits that after registration of the FIR, the statement under Section 164 Cr.P.C. of the prosecutrix was recorded by the learned ACJM, Hisar on 3rd July, 2020. He submits that the prosecutrix altogether gave a new colour to the same when it is compared with her statement made in the FIR. He submits that she deposed that the boys administered some intoxicant to the prosecutrix before committing rape upon her. In addition to this, she also deposed that the accused Vishnu i.e. the petitioner had committed rape upon her on the earlier occasion also. However, these allegations were never part of the FIR which was registered on the statement of the prosecutrix itself. He submits that in the facts and circumstances of the case where the prosecutrix and the petitioner both are of the age of majority at the most it could be a consensual relationship and once it is consensual relationship, the offence under Section 376 IPC would not be attracted. He submits that the trial Court has already commenced with recording of the evidence. The summons have been issued to the prosecutrix time and again for securing her presence for recording her depositions however, despite six opportunities having been granted to the prosecutrix, till date she has not appeared before the trial Court. He submits that the only endeavour of the prosecutrix is to prolong the incarceration of the petitioner behind bars. He submits that the prosecutrix is a young boy and has no criminal antecedents. He has never been involved in any of the case on earlier occasions. He submits that in view of the overwhelming facts on record, the petitioner deserves to be granted bail.

Learned State counsel opposes the submissions made by counsel for the petitioner. He submits that there are specific allegations against the petitioner. He has contended that the petitioner has committed rape upon her as alleged in the FIR and the prosecutrix supported the case of the prosecution while deposing before the Magistrate at the time of recording her statement under Section 164 Cr.P.C. However, he candidly acknowledges that the prosecutrix despite number of opportunities so far, has not entered to the witness box. He further submits that in all, there are 16 prosecution witnesses, however, none has been examined so far.

I have heard learned counsel for the parties and perused the record.

Admittedly, the prosecutrix and the petitioner both are of the age of majority. As per the initial version in the FIR which is recorded by the prosecutrix herself that 3-4 boys allegedly abducted the prosecutrix from her home and took her to the house of petitioner where she was allegedly raped. However, on conclusion of the investigation, the offence of gang rape was deleted and the challan was presented and there remained only one accused i.e. the petitioner. Besides this, there is nothing on record showing the petitioner having any criminal antecedents. The prosecutrix has been summoned by the trial Court time and again and as submitted before this Court, six opportunities have been granted so far for securing her presence before the trial Court, however, till date she has not made her available for recording the same.

The trial of the case will take sufficient long time and no useful purpose will be served by keeping the petitioner in custody for

such a long time. The allegations and the counter-allegations would be assessed by the trial Court on the conclusion of the trial. This Court would refrain from commenting anything on the merits of the case, however, confining itself to the prayer for grant of bail, this Court finds that counsel for the petitioner succeeds in making out a case for grant of regular bail. Accordingly, 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 concerned trial Court/Duty Magistrate. Nothing said herein shall be treated as an expression of opinion on the merits of the case.

13.05.2022
m. sharma

(**RAJESH BHARDWAJ**)
JUDGE

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