

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

(215)

CRM-M-8812-2021

Date of Decision: 02.05.2022

Mohammad Kamil

--Petitioner

Versus

State of Punjab

--Respondent

CORAM:- HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present:- Mr. Robin Sathi, Advocate
for the petitioner.

Ms. Sakshi Bakshi, AAG, Punjab.

RAJESH BHARDWAJ.J

Petitioner has filed this petition praying for grant of regular bail in case FIR No.359 dated 22.09.2020, under Sections 376, 323 of IPC, registered at Police Station Zirakpur, District Mohali.

As per the facts of the case, the present FIR was lodged by the prosecutrix (name concealed). It was alleged in the FIR that she is 20 years of age and resides with her parental family. She was working as a helper at MTBS Baltana. She was married to Wajid of Delhi about 4 years ago. However, she was living with her parental family at Zirakpur. In 2019 on the occasion of Moharram, she met a boy namely Kamil (petitioner) from Panchkula and they became good friends. In the evening when she left her office at about 06:00 PM, Kamil who was on motorcycle, called her and offered to drop her to home. Trusting him, she sat on his motorcycle but he took her to some deserted place instead of dropping her to her house. He started forcing her for physical relations. On resistance, he started beating her and she received many injuries and she starting loosing her

consciousness. Thereafter, Kamil raped her forcibly and ran away leaving her alone. She came home and on seeing her precarious condition, her family members got her admitted in the Dhakoli Hospital. Thereafter, the present FIR was lodged to take the legal action against the culprits. The investigation commenced and the statement of the witnesses were recorded. The investigation was completed and the challan was presented. The petitioner was arrested on 23.09.2020. The petitioner approached the learned Special Court, SAS Nagar, Mohali by way of filing petition under Section 439 Cr.P.C. praying for grant of bail. After hearing counsel for the respective parties, learned Special Court declined the same vide its order dated 28.10.2020. Aggrieved by the same, the petitioner has approached this Court praying for grant of bail.

Learned counsel for the petitioner has vehemently contended that the petitioner has been falsely implicated in this case. He submits that the petitioner and the prosecutrix both are of the age of majority. He further submits that the petitioner has been falsely implicated in this case as there is enmity in the neighbourhood. He submits that the prosecutrix being the age of majority could not have been pressurized by the petitioner as alleged by the prosecutrix. He submits that the prosecutrix has been examined by the trial Court as PW-2. He submits that during her examination before the trial Court the prosecutrix has not supported the case of the prosecution. He has relied upon the judgments titled as Lalu Khan and another Vs. State of Rajasthan, 2013(7) RCR (Criminal) 1974, Rajkumar Sahir Khandekar Vs. The State of Maharashtra and another, 2020(2) AIR Bom.R(Cri.) 847, Shivalingappa Vs. State through Madan Hipparga Police Station, Gulbarga, 2014(7) RCR (Criminal) 2274, Subhamoy Shailender Burman and others

Vs. State of Karnataka, 2018(1) AIR Kar R 85. It is contended that the petitioner is a young boy and has been falsely implicated in this case and in view of the facts and circumstances, he deserves to be granted bail.

Learned counsel for the State has opposed the submissions made by counsel for the petitioner. She has contended that though the prosecutrix is of the age of majority, however, she has emphatically deposed about the complicity of the petitioner in the offence committed. She submitted that the petitioner had clandestinely taken the prosecutrix to a secluded place where he raped her. During investigation, the statement of the prosecutrix was recorded under Section 164 Cr.P.C. wherein, she deposed about the rape committed with her by the petitioner. She further submits that the prosecutrix was medically examined and samples were taken for the DNA sampling. She vehemently submits that the DNA report is received and the same duly corroborates the ocular version of the prosecutrix about the rape committed by the petitioner. She has submitted that the mother of the prosecutrix has been examined by the trial Court as PW-1 and the prosecutrix has been examined as PW-2 and both have supported the case of the prosecution. She further submits that recording of the evidence is at the initial stage and out of 18 prosecution witnesses, material witnesses i.e. the prosecutrix and her mother have been examined by the trial Court and both have duly supported the case of the prosecution. She submits that in view of the overwhelming unimpeachable evidence on record, the petitioner has no case for grant of bail.

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

The prosecutrix though is of the age of majority but she has lodged the FIR with the allegations in certain terms that the petitioner has committed rape upon her. While recording her statement under Section 164 Cr.P.C. she reiterated her allegations made in the FIR. Thereafter, during investigation, her medical was conducted and the swabs were also taken for the DNA sampling. On receipt of DNA report, it further strengthened the allegations made by the prosecutrix. Besides this, both the material witnesses i.e. the mother of the prosecutrix and the prosecutrix herself supported the case of the prosecution while being examined by the trial Court. Out of 18 prosecution witnesses, only 02 witnesses are examined so far and the majority of the witnesses still remain to be examined. The judgments relied upon by the petitioner are distinguishable on the facts and circumstances of the case and hence, not applicable to the facts of the present case.

After hearing counsel for the parties and perusing the record of this case, this Court is not in agreement with the arguments raised by counsel for the petitioner. This Court is of the opinion that in the overall facts and circumstances of the case, the petitioner has no case for grant of bail as contended.

Resultantly, the petition being devoid of any merits is hereby dismissed. Nothing said herein shall be treated as an expression of opinion on the merits of the case.

(RAJESH BHARDWAJ)
JUDGE

02.05.2022
m.sharma

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