

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

**CRM-M-9717-2022(O&M)
Date of Decision: 29.08.2022**

Ajay Kumar

..... Petitioner

versus

State of Haryana

..... Respondent

CORAM : HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA

Present: Mr. R.A. Sheoran, Advocate for the petitioner.

Ms. Shruti Jain Goyal, DAG, Haryana.

TEJINDER SINGH DHINDSA, J. (ORAL)

CRM-30015-2022

Application is allowed as prayed for.

The accompanying statement and deposition of the victim
(PW6) is taken on record as Annexure P-8

Application disposed of.

Main case

Instant petition has been preferred by the petitioner under Section 439 Cr.P.C. seeking regular bail pending trial in FIR No. 54 dated 09.04.2020, under Sections 354A, 354D, 363, 366, 376, 506 IPC and Section 3(2)V of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, registered at Women Police Station, Bhiwani, District Bhiwani.

Counsel for the petitioner at the very outset brings to the notice
of this Court that an application filed under Section 216 Cr.P.C. by the

complainant and through the prosecution on 18.07.2022 has been decided by the trial Court wherein the date of birth of the victim has been accepted as 21.08.2001 and as such she has been deemed to be a major on the date of alleged incident i.e.09.04.2020. He further submits that the trial Court has consequently altered the charge framed under Section 363 IPC to Section 365 IPC. Such factual assertion is not disputed by learned State counsel.

In view of the above, in the head note as also the prayer clause of the instant petition, the prayer for regular bail that has been raised in the instant petition would be considered by adding offence under Section 365 IPC instead of Section 363 IPC.

Counsel for the parties have been heard.

During the course of arguments it has gone uncontroverted that the initial version set up by the prosecutrix and as recorded in the FIR dated 09.04.2020 is at a variance of her statement recorded in the court as PW6. In this regard it was taken note that as per initial version leading to the registration of the FIR dated 09.04.2020 it was alleged that the present petitioner was residing in the neighbourhood and was keeping an evil eye on the complainant. He had obtained the mobile phone of the complainant by issuing threats. On 24.03.2020 it is alleged that the petitioner had established contact on the mobile phone of the complainant and asked her to come near Government Girls Middle School failing which a threat was issued that her brother would be kidnapped and harmed. Complainant having arrived at the spot, she was made to sit in the car forcefully. The vehicle was then driven away towards a different location and upon parking the car on the road side, the present petitioner is alleged to have committed rape on the

complainant. Complainant asserted that she did not share the incident due to fear and threats given by the petitioner.

Thereafter on 09.04.2020 in the morning hours, a message was received by the complainant on her mobile phone again calling upon her to reach the same spot i.e. near the Government Girls Middle School. Under threat the complainant is stated to have proceeded to the spot in question and then again she was forced to sit in the car and the vehicle was then driven away. However, there was a police post on the way and on having raised an alarm, she was rescued and it is at this stage that she narrated the entire matter to the police.

This Court has perused the deposition of the prosecutrix/victim, recorded before the trial Court at Annexure P-8. In such deposition the complainant has essentially harped on an incident dated 09.04.2020 alleging rape. In the initial version leading to the registration of FIR, the incident of 09.04.2020 was only as regards an attempt having been made. Still further there is another discrepancy inasmuch as in the first version there was allegation of rape having been committed on 24.03.2020 whereas in her deposition before the trial Court she is referring to a different date i.e. 25.03.2020.

Petitioner was arrested on 28.04.2020 and has faced incarceration over a period of 02 years and 04 months.

Out of 25 prosecution witnesses cited, 8 witnesses including material witness i.e. the victim has already been examined.

The trial would take time to conclude.

It is not the case made out on behalf of the State that if the

concession of bail were to be granted, the petitioner would be in a position to hamper the course of a free and fair trial.

In view of the discussion hereinabove and without opining on the merits of the case, this Court is inclined to accept the prayer made in the petition.

Petition is allowed.

Petitioner be enlarged on bail subject to his furnishing bail bonds/surety bonds to the satisfaction of the Trial Court/Duty Magistrate concerned

Disposed of.

(TEJINDER SINGH DHINDSA)
JUDGE

29.08.2022
sunita