

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

CRM-M-11513-2022

Date of Decision:-23.03.2022

Rakesh.

.....Petitioner.

Versus

State of Haryana.

.....Respondent.

CORAM:- HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present:- Mr. Munish Kumar Garg, Advocate for the Petitioner.

Mr. Vikrant Pamboo, Deputy Advocate General, Haryana.

JASJIT SINGH BEDI, J.(ORAL)

The Prayer in this petition is for the grant of regular bail under Section 439 Cr.PC in case FIR No.427 dated 12.10.2021 under Sections 195-A, 341 and 506 IPC registered with Police Station Kalanaur, District Rohtak.

The brief facts of the case are that an FIR No.122 dated 22.03.2021 under Sections 365, 376, 506 IPC and Section 4 of POCSO Act and 3(2)(V) of SC/ST Act Police Station Kalanaur was registered at the instance of the victim with the allegations that the petitioner on 19.03.2021 met the victim, served her sugarcane juice as a result of which she became unconscious. The allegations thereafter are that he took her to his fields and committed rape upon her against her wishes. Based on the allegations in the application dated 22.03.2021, an FIR No.122 dated 22.03.2021 under Sections 365, 376, 506 IPC and Section 4 of the POCSO Act & 3(2)(V) SC/ST Act came to be registered against the petitioner Rakesh son of Rajender @ Raju. The petitioner was arrested on the same day and challan was submitted to the Court. The petitioner sought the concession of regular bail which was granted to him vide order dated 6.7.2021 (Annexure P-1).

Thereafter, the present FIR came to be registered against the petitioner at the instance of the said complainant/victim with the allegations that on 12.10.2021 the petitioner threatened to kill her and her family members in case she depose against him on 19.10.2021 on which date the case was fixed for recording of prosecution evidence. Based on the said complaint, the present FIR No.427 dated 12.10.2021 came to be registered against the petitioner in which case he was arrested on 16.10.2021. The final report in this FIR was filed on 23.10.2021.

The counsel for the petitioner submits that now in the FIR No.122 where the allegations pertain to rape etc., the prosecutrix, namely, Sonia did not support the prosecution case and was declared hostile. Her deposition is placed on record as Annexure P-6. Thereafter the mother of the prosecutrix appeared as PW-2 and the father as PW-3. Both the witnesses did not support the prosecution case and were declared hostile. The copies of the statements of the two witnesses are Annexure P-8 & P-9 respectively. The Counsel for the petitioner, therefore, submits that this FIR emanates out of the earlier FIR No.122 and once the three main witnesses in FIR No.122 have not supported the case of the prosecution, he deserves the concession of bail. He further submits that he has been granted bail in FIR No.122 on 6.7.2021 (P-1) and the said bail was never sought to be cancelled. He next contends that the petitioner is in custody since 16.10.2021 and more witnesses need to be examined to bring home the guilt of the petitioner which could further delay the conclusion of the trial.

The Counsel for the State on the other hand has opposed the bail application on the grounds that a very serious offence has been committed and the petitioner does not deserve the concession of bail because after the grant of bail in FIR No.122, he has threatened the prosecutrix leading to the registration of the present FIR.

I have heard learned Counsel for both the parties at length.

Admittedly, the petitioner was granted the concession of bail in FIR No.122 vide order Annexure P-1. The main witnesses in the said FIR i.e. the prosecutrix and her parents have not supported the case of the prosecution. There is nothing on record to suggest that after they turned hostile any complaint was lodged by them of them turning hostile on account of any threat at the instance of the petitioner. The same

prosecutrix/victim is the first informant in the present FIR. Admittedly, in the present case the petitioner is in custody since 16.10.2021 and the trial is not likely to be concluded in near future. Thus, the further incarceration of the petitioner is not required.

Thus, without commenting upon the merits of the case, keeping in view the period of custody and the fact that the trial is not likely to be concluded in near future, the present petition is allowed and the petitioner **Rakesh** son of Sh. Rajender @ Raju is ordered to be released on bail subject to the satisfaction of learned CJM/Duty Magistrate, Rohtak.

It is further made clear that in case any attempt is made to threaten the prosecutrix or her family members, the State/complainant shall be at liberty to move an application for cancellation of bail granted to the petitioner.

(JASJIT SINGH BEDI)
JUDGE

March 23, 2022
Vinay

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