

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

CRM-M-12938-2021 (O&M)
Date of Decision: 17.2.2022

Balinder

..... Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Ms. Savita Rana, Advocate, for the petitioner.

Mr. Vishal Kashyap, Deputy Advocate General, Haryana.

Rajesh Bhardwaj, J. (ORAL)

Matter has been taken up through video conferencing via Webex facility in the light of the Pandemic Covid-19 situation and as per instructions.

Prayer in the present petition is for the grant of regular bail to the petitioner in a case FIR No.960 dated 22.11.2019, registered under Sections 376 IPC and Section 6 of Protection of Children from Sexual Offences Act, 2012 (Section 376(3) IPC was added lateron), at Police Station Karnal City, District Karnal.

As per the case set up by the prosecution, the case in hand pertains to the offence committed by the petitioner against a minor, who was 13 years of age at the time of occurrence. The FIR in question was lodged by the mother of the victim, who alleged that her daughter/victim (name concealed) had gone on work before 14.11.2019 and the victim told her mother that Binder son of Chhota Ram village of Gagsina i.e. the petitioner had called her and asked about her whereabouts. Binder met the victim at Devi Lal Chowk and took her in auto rickshaw to village Gogdipur. There

Binder's friend came on a bike and all three went to village Gagsina. Thereafter, Binder took her to his home and they stayed together in the night, where he raped the minor many times. Thereafter, on 15.11.2019, the petitioner dropped the minor at Devi Lal Chowk at 5:00 a.m. The FIR was lodged on 22.11.2019 and request was made to take legal action against the culprits. Statement under Section 164 Cr.P.C. of the prosecutrix was recorded. The petitioner was arrested on 28.11.2019. He approached the learned Additional Sessions Judge, Karnal for grant of bail, who after hearing the parties, declined the same vide its order dated 6.11.2020. Aggrieved by the same, the petitioner approached this Court by way of filing the present petition for grant of regular bail.

Learned counsel for the petitioner has contended that the petitioner has been falsely implicated in the present case. She submits that this is a case of consent. The petitioner is a 20 years old young boy and has been implicated in this case only on account of the age of the victim, as on her recovery the parents of the victim put pressure on her to depose against the petitioner. Learned counsel for the petitioner has vehemently contended that false implication of the petitioner is substantiated from the very fact that the trial Court has now examined the victim and her mother as PW-1 and PW-4, respectively. She has placed on record copies of their testimonies and drawn the attention of this Court to the same to show that both these witnesses have not supported the case of the prosecution and they were declared hostile. A perusal of their testimonies shows that the victim has deposed before the trial Court that on the eve of Karvachauth, she had gone to market to purchase samosas and one unknown boy teased her and when she raised alarm, he fled away. She could not identify the boy. After

returning she narrated the incident to her parents. It was further deposed by her that on the next day, when they went to the Police for making complaint, the Police obtained her signatures on some blank papers on pretext of some formalities and she never suffered any statement against accused Balinder. On this, the learned Public Prosecutor made request to declare the witness hostile. Similarly her mother, who was examined as PW-4 also deposed on the same line that her signatures were obtained by the Police on blank papers on pretext of the formalities and she never moved any written complaint to the Police against the accused-petitioner and she was also declared hostile. Learned counsel for the petitioner further submits that the alleged occurrence took place on 14.11.2019, whereas the present FIR was lodged on 22.11.2019 i.e. after an unexplained delay of 8 days. She submits that in view of the overall facts and circumstances, the petitioner be enlarged on bail.

Learned State counsel, on instructions from SI Babita submits that the prosecutrix is 13 years of age and thus a minor. He submits that the consent of the victim has no legal sanctity, even if she went with the petitioner with her consent, the petitioner cannot be absolved from the offences committed by him. However, he acknowledges that out of 18 prosecution witnesses, 8 witnesses have been examined including the prosecutrix and her mother i.e. the complainant. He further acknowledges that both these witnesses have not supported the case of the prosecution.

Heard.

The petitioner is a young boy of 20 years of age and is behind bars since 8.6.2021. Both the victim and her mother have not supported the case of the prosecution. Out of 18 prosecution witnesses, virtually half of

the witnesses already stands examined. The trial is at the advanced stage where even if the petitioner is enlarged on bail, there cannot be any threat whatsoever for tampering with the on going evidence as the material witnesses already stands examined. Even otherwise both the crucial witnesses have not supported the case of the prosecution. The trial of the case will take sufficiently long time and no useful purpose will be served by keeping the petitioner in custody for such a long time. In the overall facts and circumstances of the case, I am of the opinion that learned counsel for the petitioner has been able to make out a case for grant of regular bail to the petitioner. Accordingly, the present petition is allowed and the petitioner is ordered to be released on bail 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.

17.2.2022
sharmila

(RAJESH BHARDWAJ)
JUDGE

Whether Speaking/Reasoned	:	Yes/No
Whether Reportable	:	Yes/No