

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

(218)

CRM-M-12746-2022(O&M)
Date of Decision: 30.08.2022

Daya Shankar

--Petitioner

Versus

State of Punjab

--Respondent

CORAM:- HON'BLE MR. JUSTICE RAJESH BHARDWAJ.

Present:- Mr. C.S. Rana, Advocate for the petitioner.

Mr. Karunesh Kaushal, A.A.G., Punjab.

RAJESH BHARDWAJ.J (Oral)

The present petition has been filed under Section 439 Cr.P.C seeking the benefit of regular bail to the petitioner in case FIR No.09 dated 19.1.2021 under section 354 IPC and section 10 of POCSO Act, registered at Police Station, Division No.7, Ludhiana.

As per factual matrix, the FIR in question was lodged by the mother of the prosecutrix, wherein it was alleged that her daughter who is 10 years old is the victim. On the date of occurrence at 4.30 PM when she called her daughter, she did not respond despite repeated calls. The complainant and her husband started searching their daughter and thereafter they heard some noise from the common bathroom. Her husband opened the door and saw Daya Shankar i.e. the present petitioner holding their daughter inside the bathroom. They saved their daughter from the clutches of the accused/petitioner. On asking, the victim told that Golu Bhaji i.e. the present petitioner forcibly caught her in the bathroom and he touched her whole body including the private parts. Thereafter, present FIR was lodged

to take legal action against the culprit.

The investigation commenced and prosecutrix was produced before the concerned Magistrate and her statement under section 164 Cr.P.C was recorded. She was also sent for medical examination by the investigating agency. Petitioner was arrested on 20.1.2021. He approached learned Addl. Sessions Judge, Fast Track Special Court, Ludhiana for grant of bail, however, after hearing the parties, the same was declined vide order dated 18.2.2021. Aggrieved by the same petitioner has approached this court for grant of bail.

Learned counsel for the petitioner vehemently contends that the petitioner has been falsely implicated in the present case. He submits that petitioner and the family of the prosecutrix are neighbors and it is on account of some money transactions between them that the dispute had arisen and on account of the same petitioner has been roped in by lodging a false case against him. Counsel submits that on the earlier occasions the dispute between the parties was compromised, however, despite that petitioner is behind bars for the last about 1 year and 7 months. Counsel submits that investigation is complete, charges have been framed and despite summoning by the Trial Court prosecutrix and the complainant are not appearing before the Trial Court for their examination only in order to prolong the incarceration of the petitioner. He submits that even if the allegations against the petitioner are taken on their face value, the minimum sentence under section 10 of POCSO Act is 5 years which can be extended up to 7 years, however, petitioner has already suffered incarceration of about 1 year and 7 months. He submits that petitioner has

no criminal antecedents and he deserves to be granted the benefit of bail.

On the other hand, learned State counsel submits that prosecutrix is minor and there are specific allegations against the petitioner. He submits that charges have been framed in this case, however, prosecutrix and complainant are yet to be examined. He candidly submits that the custody of the petitioner is about 1 year and 7 months. He submits that in all there are 18 prosecution witnesses, however, none has been examined so far. He further submits that as per information provided to him by ASI Deep Chand petitioner is not involved in any other case.

I have heard learned counsel for the parties at length and have gone through the records carefully.

Admittedly, petitioner is behind bars since 20.1.2021. The investigation in the case is complete and charges have been framed, however, despite repeated summoning prosecutrix and complainant have not appeared before the Trial Court for their examination. Petitioner has already suffered incarceration for about 1 year and 7 months. As per the information provided by the State, petitioner has no criminal antecedents. The veracity of the allegations levelled against the petitioner would be assessed by the Trial Court only upon conclusion of the trial. This court would refrain itself from commenting on the merits of the case, as the allegations and counter allegations would be assessed only after evaluation of the complete evidence to be led by both the sides before the Trial Court. The trial would take sufficiently long time in its conclusion.

In the totality of facts and circumstances and without making any observation on merits, present petition is allowed. Petitioner be

enlarged on bail on his furnishing bail/surety bonds subject to the satisfaction of Trial Court/Duty Magistrate, concerned. Nothing stated herein shall be treated as an expression on the merits of the case.

(RAJESH BHARDWAJ)
JUDGE

30.08.2022

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