

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

CRM-M-12812-2022

Date of Decision: 21.12.2022

Sushil @ Seta

..... Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Kawalpreet Singh Virk, Advocate, for the petitioner.

Mr. Kirpal Singh Thakur, Asstt. Advocate General, Haryana.

Rajesh Bhardwaj, J. (ORAL)

Prayer in the present petition is for the grant of regular bail to the petitioner in a case FIR No.178 dated 04.08.2021, registered under Sections 376(2)(n), 506 IPC, at Police Station City Safidon, District Jind.

As per factual matrix of the case, the present FIR was lodged by the prosecutrix herself (name concealed), wherein it was alleged that she was living with her husband Sushil @ Sheela since the year 2020 on the Gaushala Road in Safidon and her husband sent to jail on 25.10.2020. In the absence of her husband, Sushil @ Seta i.e. the present petitioner, friend of her husband started visiting her regularly. He established physical relations with the prosecutrix under threat. It was alleged that he raped her many times despite her resistance. He threatened her that if she tried to get her husband bailed out, then he would kill her husband. It was further alleged that she became pregnant with the alleged rape by the petitioner. Request was made to take strict action against the accused. On the basis of complaint, a formal FIR was registered and investigation commenced.

Statement of the prosecutrix was recorded under Section 164 Cr.P.C. and

she was medically examined as well. The petitioner was arrested on 24.09.2021. The trial Court framed charges and fixed the case for examination of prosecution witnesses. The petitioner approached the Court of learned Additional Sessions Judge, Jind for grant of bail, who, after hearing the parties, declined the same vide order dated 25.01.2022. Aggrieved by the same, the petitioner has approached this Court by way of filing the present petition for grant of bail.

It has been vehemently contended by learned counsel for the petitioner that the petitioner has been made a scapegoat by the prosecutrix. He submits that the petitioner and the prosecutrix both are of the age of the majority. He submits that as per allegations made in the FIR, the petitioner was friend of her husband and it is clear from the facts and circumstances of the case that both were in a consensual relationship and by no stretch of imagination, the same can be said to be a rape as alleged by the prosecutrix. He has submitted that the Investigating Agency completed the investigation and filed the challan and charges have also been framed. He submits that thereafter, the learned trial Court gave ample opportunities for examination of the prosecutrix, however, despite number of opportunities, the prosecutrix did not appear for her examination. He submits that this Court also directed the State to file the status report, which has been filed and it is evident that husband of the prosecutrix has criminal antecedents. He submits that the prosecutrix is intentionally not appearing before the learned trial Court just to prolong the incarceration of the petitioner. He submits that in the facts and circumstances of the case, the petitioner deserves to be granted bail.

On the other hand, learned State counsel has opposed the

submissions made by learned counsel for the petitioner. He submits that the prosecutrix has levelled specific allegations against the petitioner and she also gave birth to a child, who was born out of this alleged rape committed by the petitioner. He submits that DNA report regarding establishment of paternity of the child is awaited. He further submits that in pursuance to the order passed by this Court, status report has been filed and as per the same, there are 10 cases pending against the husband of the complainant and two cases are pending against the petitioner. He submits that SI Kulwant Singh raided the house of the prosecutrix, however, the prosecutrix and her husband could not be traced. It was further submitted that the Investigating Agency is trying its level best to search the prosecutrix, but so far they could not succeed. He has submitted that the learned trial Court has framed charges, however, the prosecutrix could not be examined for the reasons that she is not traceable.

Heard.

Evidently, the prosecutrix and the petitioner both are of the age of the majority. The prosecutrix as submitted before this Court is not traceable. The petitioner is behind bars since 24.09.2021. However, this Court could not ignore the fact that the prosecutrix though lodged the FIR against the petitioner, however, thereafter till date she is not traceable. Incarceration of the petitioner cannot be extended indefinitely. The veracity of the allegations would be evaluated by the trial Court only after appreciation of the complete evidence led before it by both the parties. This Court would refrain itself from commenting anything on the merits of the case, however, considering the prayer for grant of bail to the petitioner, I am of the view that learned counsel for the petitioner has been able to make out

a case for grant of regular bail to the petitioner. The trial would take sufficiently long time for its conclusion.

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.

21.12.2022		(RAJESH BHARDWAJ)
sharmila		JUDGE
	Whether Speaking/Reasoned :	Yes/No
	Whether Reportable :	Yes/No