

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

CRM-M-14144-2022 (O&M)

Date of Decision: 15.7.2022

Sameer Uddin

..... Petitioner

Versus

State of UT, Chandigarh

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Ram Parkash Dhir, Advocate, for the petitioner.

Mr. Shashank Bhandari, Addl. PP, UT, Chandigarh.

Ms. Ekta Thakur, Advocate, for the complainant.

Rajesh Bhardwaj, J. (ORAL)

CRM-19097-2022

Application is allowed and the Annexure P-8 is taken on record.

Main case

Prayer in the present petition is for the grant of regular bail to the petitioner in a case FIR No.34 dated 27.3.2021, registered under Sections 354, 354-A, 354-B IPC and Section 10 of POCSO Act, at Police Station Maloya, District UT, Chandigarh.

As per factual matrix of the case, the complaint was filed by the prosecutrix herself (name concealed). Sum and substance of the allegations made by the prosecutrix is that she was 15 years of age and they opened a karyana shop in their house. On the day of occurrence at about 5-6 p.m. she was in the shop and her parents were not at home. At that time two boys residing in their neighbourhood, whose names she did not know, came in the shop and asked the prosecutrix to give Pasta. She went inside to bring

the same and in the meantime, both of them followed her and they caught hold her. They forcibly kissed her and pressed her breast and removed her clothes. In the meantime, her uncle came and gave slaps to them on which they fled away. The complaint was filed to take legal action against the culprits. On the basis of the same, the FIR was lodged and the investigation commenced. The petitioner was arrested on 27.3.2021. The petitioner approached the learned Fast Track Special Court, Chandigarh for grant of bail, who after hearing the parties, declined the same vide its order dated 20.4.2021. 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 FIR. He submits that the story put-forth by the prosecution is totally unbelievable. He submits that the petitioner is a young boy 21 years of age and has never been involved in any case and thus, has no criminal antecedents. He submits that the petitioner is being prosecuted for the offence under IPC and under Section 10 of POCSO Act, as the prosecutrix was less than 18 years of age. The Investigating Agency has relied upon the statement of the prosecutrix and implicate the petitioner without fair investigation. He has submitted that the case of the prosecution is solely rest upon the statement of the prosecutrix and there is no other evidence to corroborate the same. To buttress his arguments, learned counsel for the petitioner submits that the prosecutrix has been examined by the trial Court as PW-1 and she has not supported the case of the prosecution. He has drawn the attention of this Court to the copy of the statement of deposition of the prosecutrix before the trial Court. He

submits that as the prosecutrix did not support the case of the prosecution, on request of learned Public Prosecutor, she was declared hostile. He further submits that the Investigating Agency cited Vijay Kumar, uncle of the prosecutrix as eye witness but during the course of trial, he has been given up by the prosecution and thus, the case of the prosecution is virtually without any evidence against the petitioner. He submits that even otherwise when the material prosecution witnesses have already been examined and the prosecutrix has not supported the case of the prosecution, further incarceration of the petitioner is totally unwarranted.

Learned counsel for the complainant has affirmed the submissions made by learned counsel for the petitioner.

Learned State counsel has opposed the submissions made by learned counsel for the petitioner and on instructions from ASI Sahab Singh submitted that the prosecutrix is minor and she has specifically deposed about the complicity of the petitioner in the crime, on the basis of which the FIR was recorded. However, he candidly acknowledges that the prosecutrix has been examined by the trial Court and she did not support the case of the prosecution and was declared hostile. He has further submitted that in all there are 17 prosecution witnesses, out of which 4 witnesses including the prosecutrix have been examined.

Heard.

After hearing learned counsel for the parties and perusing the record, it is apparent that the petitioner is behind bars since 27.3.2021. The prosecutrix admittedly is minor, however, her testimony shows that while appearing before the trial Court as PW-1, she did not support the case of the

prosecution. A perusal of the statement made before the trial Court would show that the accused was shown to the witness on VC screen installed in the Court room and after seeing the persons on the VC screen, the witness deposed that “I do not know the persons shown to me on the VC screen.” Besides this another eye witness, namely, Vijay Kumar cited by the prosecution, is also said to have been given up by the prosecution. As per the submission made by learned counsel for the petitioner, all the material witnesses including the prosecutrix already stands examined.

The veracity of the allegations would be evaluated by the trial Court only after conclusion of the trial after appreciating the evidence led by both the sides. 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. The trial is likely to take time in 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.

15.7.2022
sharmila

(RAJESH BHARDWAJ)
JUDGE

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