

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

(104+214)

CRM-M-16339-2021(O&M)

Date of Decision: 23.03.2022

Sukhwinder Singh

--Petitioner

Versus

State of Haryana

--Respondent

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

Present:- Mr. A.S. Brar, Advocate for the petitioner.

Mr. Vishal Kashyap, D.A.G., 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.

CRM-9303-2022

Application is allowed as prayed for.

Document Annexure A-1 is taken on record.

Main Petition

The present petition has been filed under Section 439 Cr.P.C for grant of regular bail to the petitioner in FIR No.79 dated 14.7.2020 registered under Sections 363, 366-A IPC and sections 376(2)(L), 451, 506 IPC at Police Station, Women, District Sirsa.

As per facts of the case, present FIR was lodged by the prosecutrix herself. She alleged that she is handicapped since her childhood and is unmarried. On the intervening night of 13/14.7.2020 at about 2 AM she was sleeping in the courtyard of her house. Suddenly when she woke up she found Sukhwinder Singh i.e. present petitioner sitting on her cot. He shut her mouth to prevent her from shouting and committed forcible rape with her. In the meanwhile her brother Gurwinder Singh got up and seeing

him the accused escaped from there. A request was made to take legal action against the culprit.

The investigation commenced and the statement of the prosecutrix was recorded under Section 164 Cr.P.C , wherein she deposed before the Magistrate on the same allegations which were there in the FIR. Thereafter the petitioner was arrested on 14.7.2020. He approached learned Addl. Sessions Judge, Fast Track Court, Sirsa for grant of bail, however, after hearing the parties, the same was declined vide order dated 18.1.2021. Aggrieved by the same petitioner has approached this court for grant of bail.

Learned counsel for the petitioner has vehemently contended that the petitioner has been falsely and frivolously implicated in the present case. It is submitted that prosecutrix was 23 years of age, whereas the petitioner was 19 years of age at the time of occurrence. It is further submitted that from the reading of the allegations in the FIR it is apparent that the same are nothing but a concocted story and are totally unbelievable. Counsel submits that at the most if the allegations are taken on their face value, the relationship between the prosecutrix and the petitioner could be consensual and not on account of the coercion on the part of the petitioner. Counsel submits that after investigation the challan was presented and on framing of the charges the Trial Court has started examining the prosecution witnesses. Counsel had drawn the attention of this Court to the deposition of the prosecutrix, who has been examined as PW-2, wherein she did not support the case of the prosecution and was declared hostile on the request of learned P.P. On perusal of her deposition it is found that the prosecutrix deposed before the Trial Court that she has seen the accused Sukhwinder Singh, who is present in the court through video conferencing. She did not

know him and he did not commit any wrong act with her in the intervening night of 13/14.7.2021. She flatly refused having lodged any case against the petitioner. Counsel submits that once the prosecutrix, who is a major has disowned her statement, the innocence of the petitioner is writ large and his further incarceration is totally unwarranted and hence he deserves to be enlarged on bail.

On the other hand learned State counsel on instructions from SI Sushila has submitted that prosecutrix is of the age of majority and she has supported the case of the prosecution at the time of lodging the FIR and even at the time of recording of her statement under Section 164 Cr.P.C. However, he candidly acknowledges that the prosecutrix has not supported the case of prosecution before the Trial Court. It is submitted that in all there are 15 prosecution witnesses out of which only 2 including the prosecutrix have been examined so far. State counsel further submits that the case of prosecution is supported by the FSL report.

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

Admittedly, both prosecutrix and the petitioner are of the age of majority. The alleged occurrence took place in the courtyard of the house of the prosecutrix in the presence of the family members. The prosecutrix has been duly examined by the Trial Court. She has been declared hostile as she did not support the case of the prosecution. This Court would refrain itself from commenting on the merits of the case and the contentions raised by counsel for both the sides at this stage. The veracity of the allegations levelled in the FIR would be assessed only after conclusion of the trial. In the overall facts and circumstances of the case, this Court finds that counsel

for petitioner succeeds in making out a case for grant of bail to the petitioner.

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 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

23.03.2022

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