

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

CRM-M-14478-2022

Date of decision : 13.07.2022

Ashok and others

.....Petitioners

versus

State of Haryana

..... Respondent

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present :- Mr. S.K. Panwar, Advocate
for the petitioners.

Mr. Kirpal Singh Thakur, AAG, Haryana.

RAJESH BHARDWAJ, J. (Oral)

Prayer in the present petition is for grant of regular bail to the petitioners in case FIR No.500 dated 05.07.2021, under Sections 148, 149, 323, 506 of IPC, 1860 (Sections 341, 509 IPC added later on and Sections 148, 149 of IPC and Section 10 of POCSO Act were deleted and Section 34 IPC was added), registered at Police Station Kharkhoda, District Sonapat, Haryana.

As per facts of the case, present FIR was lodged by the prosecutrix (name concealed). The allegations are that on 4.7.2021 when the prosecutrix was coming from the playground after playing and was accompanied by other girls, they were surrounded by the accused including the present petitioners. All the accused abused and misbehaved with the girls and forcibly dragged the prosecutrix in a house. When she opposed they gave blows on her head with some sharp edged thing and also gave beatings with spade handle and lathis. The accused also gave leg blows on her stomach, feet and private parts of prosecutrix and she became unconscious.

The investigation commenced and in pursuance to the same petitioners were arrested on 7.7.2021. They approached learned Addl. Sessions Judge, Fast Track Court, Sonapat for grant of bail, however, after hearing the parties, the same was declined vide order dated 24.11.2021. They approached this Court by way of filing CRM-M-36696-2021, however, the same was dismissed as withdrawn vide order dated 3.11.2021. Aggrieved by the same petitioners have approached this court for the second time for grant of bail.

Learned counsel for the petitioners has vehemently contended that the petitioners have been falsely and frivolously implicated in the present case. He submits that this is a case of version and cross-version. He submits that the alleged occurrence took place on 4.7.2021 and the petitioners were in fact assaulted by the opposite side, however, the police refused to register their version. Having no alternative they approached the court of competent jurisdiction seeking a direction for registering FIR against the culprits. On the direction of the court FIR No.509 dated 9.7.2021 (Annexure P-2) was registered. He submits that the version of the petitioners was not recorded by the police, however, for the same occurrence the version of the prosecutrix was recorded pertaining to the even date i.e. 4.7.2021. Counsel submits that as the present case is of version and cross-version it is a matter of trial to establish who was the aggressor. To buttress his arguments, counsel has submitted that now the victim and her sister have been examined by the Trial Court as PW-1 and PW-2 respectively and both have not supported the case of the prosecution and thus, have been declared hostile. Counsel has placed on record the copies of the testimonies of PW-1 and PW-2

and statement of PW-1 would read that on 4.7.2021 while all the girls were playing Kabaddi in playground there arose a dispute and she received injuries, however, she does not know who inflicted injuries to her. The prosecutrix deposed that the accused persons present in court neither inflicted injuries to her nor had ever sexually assaulted her. PW-2 the sister of the prosecutrix also deposed on the same lines. Counsel further submits that though the FIR was registered for the offence under POCSO Act, however, at the time of submission of supplementary challan the offence under Section 10 of POCSO Act and sections 148, 149 IPC were deleted. Counsel submits that as the material witnesses themselves have not supported the case of the prosecution, further incarceration of the petitioners is totally unwarranted and they deserve to be enlarged on bail. He also submits that co-accused Ashish has also granted by this Court vide order dated 30.03.2022 in CRM-M-50658-2021.

On the other hand learned State counsel on instructions from ASI Ved Pal has also opposed the submissions made by counsel for petitioners. He submits that there are specific allegations of causing injuries and outraging the modesty of the prosecutrix. However, he candidly acknowledges that at the time of submission of supplementary challan the offence under Section 10 of POCSO Act and sections 148, 149 IPC were deleted and that the co-accused Ashish has already been allowed bail by this Court.

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

The petitioners are behind bars since 7.7.2021. It is a case of version and cross-version. The prosecutrix and her sister have been duly

examined before the Trial Court and they have not supported the case of the prosecution. There are two different FIRs at the behest of both the parties. As the present case is of version and cross-version it is a matter of trial to establish who was the aggressor. Ashish co-accused of the petitioners has already been allowed bail by this Court vide order dated 30.03.2022 passed in CRM-M-50658-2021. This Court would refrain itself from commenting anything on the merits of the case. However, in the overall facts and circumstances of the case, this Court finds that counsel for petitioners succeeds in making out a case for grant of bail to the petitioners.

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

13.07.2022
m. sharma

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No