

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

CRM-M-16594-2022

Date of Decision: 05.09.2022

Saurabh Kumar

..... Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Pardeep Panwar, Advocate, for the petitioner.

Mr. Kirpal S. Thakur, Assistant 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.165 dated 10.3.2021, registered under Sections 363, 366-A, 376-C, 376-D IPC and Sections 6 and 17 of POCSO Act, 2012, at Police Station City Sonapat, Haryana.

As per factual matrix of the case, the present complaint was made by the prosecutrix (name concealed). It was alleged that her age was 14 years and on 10.3.2021 in the morning at about 9:00 a.m., she came to Sonapat alongwith her uncle, Karambeer. After having food at S.K. Misthan Bhandar, she was standing outside. After some time, Nikhil and his friend Saurabh, i.e. the petitioner came there. She knew them as they used to do mason work near her house. They allured her and took her to one Hotel. Nikhil took her into the room, where he committed rape with her against her wish. She returned home and disclosed the incident to her father and she was taken to PGIMS, Khanpur for treatment. Request was made to take legal action against the accused Nikhil and Saurabh. After registration of the FIR, the investigation commenced and the statement of the prosecutrix was

recorded under Section 164 Cr.P.C. on 12.3.2021. The petitioner was arrested on 23.8.2021. He approached the Court of learned Addl. Sessions Judge, Fast Track Court, Sonapat for grant of bail, who, after hearing the parties, declined the same vide order dated 2.2.2022. Aggrieved by the same, the petitioner has approached this Court by way of filing the present petition for grant of bail.

Learned counsel for the petitioner has vehemently contended that the petitioner has been falsely and frivolously implicated in this case. He submits that the prosecutrix being less than 18 years of age, the petitioner has been implicated in this case in a deliberate manner. He submits, though the petitioner has been named in the FIR, however, there are no allegations pertaining to alleged offence against the petitioner. He has submitted that during the investigation, the statement of the prosecutrix was recorded under Section 164 Cr.P.C., wherein, she has specifically deposed that the petitioner stood outside the room when the alleged offence was committed by co-accused Nikhil. To buttress his arguments, he submits that after the presentation of challan, charges were framed and the learned trial Court has examined the prosecutrix, her mother, and her father as PW-3, PW-4 and PW-5, respectively. He submits that all these three material witnesses did not support the case of the prosecution and hence, were declared hostile by the Court on the request of learned Public Prosecutor. He submits that first of all there are no allegations pertaining to rape against the petitioner and thereafter, all the material witnesses did not support the case of the prosecution, which would show false implication of the petitioner. He submits that even otherwise, the material witnesses having

been examined there is no possibility of the petitioner influencing the prosecution evidence. He submits that the petitioner has no criminal antecedents and thus, in the overall facts and circumstances, the petitioner deserves to be granted bail.

However, learned State counsel has opposed the submissions made by learned counsel for the petitioner. On instructions from ASI Ajmer Singh, he submits that prosecutrix is minor and there are specific allegations against both the accused. He submits that the prosecutrix has specifically deposed against both the accused regarding alluring her and taking her to Hotel, where co-accused Nikhil raped her. He submits that even in her statement under Section 164 Cr.P.C., she has levelled allegations of rape against Nikhil whereas the petitioner was guarding by standing outside the room. However, he candidly acknowledges that the material witnesses have not supported the case of the prosecution. He submits that though the prosecutrix was medically examined, however, the FSL report is still awaited. He submits that out of total 26 prosecution witnesses, 14 witnesses including the prosecutrix and her parents have been examined. He submits that as per the instructions received to him, the petitioner has not involved in any other case except the present case.

Heard.

The petitioner is behind bars since 23.8.2021. In the statement made in the FIR as well as in the statement recorded under Section 164 Cr.P.C. the victim deposed that the illegal act was committed by co-accused Nikhil. Thereafter, the prosecutrix, her mother and her father had been examined by the trial Court as PW-3, PW-4 and PW-5, respectively and

they have not supported the case of the prosecution. Perusal of the statements of the witnesses shows that they deposed before the Court that they did not know anything regarding the present case. There is nothing on record showing that the petitioner has any criminal antecedents. As per the statement of learned State counsel, out of total 26 prosecution witnesses, 14 witnesses have already been examined including the prosecutrix and her parents, thus, the possibility of the petitioner influencing the prosecution evidence no more survive.

The veracity of the allegations would be evaluated by the trial Court only after conclusion of the trial. 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 sufficient 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, who will ensure that the petitioner furnishes local surety.

Nothing said herein shall be treated as an expression of opinion on the merits of the case.

05.09.2022
sharmila

Whether Speaking/Reasoned :
Whether Reportable :

(RAJESH BHARDWAJ)
JUDGE
Yes/No
Yes/No