

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

CRM-M-16664-2022

Date of decision : 19.12.2022

Pushpa Sihag

.....Petitioner

versus

State of Haryana

..... Respondent

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present :- Mr. Gautam Dutt, Advocate
for the petitioner.

Mr. Kirpal Singh Thakur, AAG, Haryana.

RAJESH BHARDWAJ, J. (Oral)

Prayer in the present petition is for grant of regular bail to the petitioner in case FIR No.484 dated 12.12.2021, under Sections 376, 376 (2)(n), 420, 354, 315, 120-B, 34 of IPC, Section 6 of POCSO; 3, 4, 5 of MTP Act, Section 18(c)27 of Drugs and Cosmetic Act (read with scheme K) 15(2), 15(3) of Indian Council Act, registered at P.S. Agroha, District Hisar.

Status report filed by learned State counsel is taken on record.

As per facts of the case, the present FIR was registered on the statement of Dr. Kamid who was heading the raiding team at Sanjivni Hospital. It was submitted that on receiving a secret information, they reached Sanjivni Hospital and asked about Dr.Pushpa Sihag i.e. the petitioner. On inspection of the hospital, they found a patient on the first floor and on asking, she told her name as Mamta wife of Dalip. On further investigation, it was found that the pateint had the pregnancy of 28 weeks and she was given medicine by Dr. Pushpa Sihag for termination of the pregnancy. For the safety of the pateint, she was shifted from there under medical supervision where the delivery had taken place. She was referred

to Agroha Medical College through official ambulance. It was further revealed during the inquiry that a sum of Rs.30,000/- to Rs.40,000/- was taken from the patient. The victim was raped by one Dalip due to which, she got pregnant. Dr. Pushpa Sihag also admitted on asking by the raiding team that the patient had come here for her abortion and for the same, the treatment was being given to her. The team of doctors found offence having been committed by the accused and accordingly, the FIR was lodged for taking legal action against the accused. On registration of the FIR, investigation commenced and the petitioner was arrested on 12th December, 2021. He submits that in all there were 05 accused against whom the prosecution commenced. On conclusion of the investigation, the petitioner approached the Court of learned Additional Sessions Judge, Fast Track Special Court, Hisar. However, after hearing counsel for the parties, learned Fast Tack Special Court declined the same vide order dated 01.02.2022. Aggrieved by the same, petitioner is before this Court praying for grant of regular bail.

It has been vehemently contended by counsel for the petitioner that the petitioner is a reputed doctor who has been falsely implicated in this case. He submits that the victim was brought by her mother to the hospital for giving the first aid as she had taken 5 MTP Kit at home itself where the complication arose and on account of the same, she was shifted by her mother to the hospital of the petitioner. He submits that the petitioner never provided any treatment for the abortion of the victim. He submits that in a clandestine manner, the raid was conducted only in order to falsely implicate the petitioner in this FIR. He submits

that the victim was thereafter, shifted by the raiding team to the Agroha hospital where she delivered premature child who died after delivery. He submits that the petitioner cannot even be prosecuted for the offence of committing abortion. To buttress his arguments, counsel for the petitioner went on to argue before this court that the prosecution has examined the victim and her mother as PW-1 and PW-2 and both these material witnesses have not supported the case of the prosecution and thus, on the request of learned Public Prosecutor they were declared hostile. He submits that even otherwise, if the prosecution succeeds in proving its case, the maximum sentence awarded to the petitioner would be upto 07 years and the petitioner has already undergone incarceration of more than a year. He submits that the petitioner has no criminal antecedents and the material witnesses already stand examined and thus, the petitioner deserves to be granted regular bail.

Learned State counsel, on the other hand, has opposed the submissions made by counsel for the petitioner. He, on instructions from IO HC Kapil Dev has submitted that the team of doctors had raided the hospital of the petitioner and the victim and her mother were found present. Besides this, the raiding team had recovered the requisite medicines and necessary equipments for carrying out unauthorized abortion of the victim. He also submits that during her interrogation, petitioner has admitted regarding the admission of the victim for carrying out her treatment. He candidly acknowledges that though the victim and her mother have not supported the case of the prosecution, however, the complainant of the FIR i.e. Dr. Kamid who has been examined as PW-3 and Dr. Jyoti who has been examined as PW4 have duly supported the

case of the prosecution. He submits that the prosecution has examined 04 witnesses, out of 33 prosecution witnesses. He submits that as per his instructions, petitioner is not involved in any other case.

I have heard counsel for the parties and perused the record.

Admittedly the petitioner before this Court is doctor by profession who is behind bars since 12.12.2021. She is being prosecuted for the offence under the Drugs and Cosmetic Act and MTP Act. The maximum sentence as argued by counsel for the petitioner would be 07 years. The material witnesses already stand examined and the victim and her mother who have been examined as PW-1 and PW-2 have not supported the case of the prosecution. There is nothing on record to show that the petitioner has any criminal antecedents.

The veracity of the allegations would be assessed only after the conclusion of the trial and on the appreciation of evidence led by both the parties before the trial Court. The trial of the case will take sufficiently long time. This Court would refrain itself from commenting anything on the merits of the case. However, confining itself to the prayer made for bail, this Court finds that counsel for the petitioner succeeds in making out a case for grant of regular bail. Accordingly, the present petition is allowed and the petitioner is ordered to be released on bail on her furnishing bail/surety bonds 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.

19.12.2022
m. sharma

(**RAJESH BHARDWAJ**)
JUDGE

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