

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

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1. CRM-M No. 16749 of 2022
Date of decision : 28.4.2022

Shubham Kumar

.....Petitioner

Vs.

State of Punjab

.....Respondent

2. CRM-M No. 16757 of 2022

Chhottu @ Komal

.....Petitioner

Vs.

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present : Mr. B.S. Bhalla, Advocate, for the petitioner(s)

Ms. Sakshi Bakshi, AAG, Punjab

RAJESH BHARDWAJ, J. (Oral)

This order shall dispose of above mentioned two petitions being culminated from the same FIR. The facts are being taken from CRM-M No. 16757 of 2022.

Instant petitions have been filed under Section 439 Cr.P.C. praying for grant of regular bail to the petitioners in case FIR No.92, dated 26.5.2021, under Sections 376D and 323 IPC (Section 325 IPC and Sections 3 and 4 of POCSO Act were added later on), registered at Police Station Dharamkot, District Moga.

As per the factual matrix of the case, the present FIR was lodged by the victim herself (name concealed). The allegations made by the victim in

the FIR that she is 18 years of age. On 24.5.2021, she was working with her parents and brother. Her mother sent her to kitchen for cooking food. When she was in the kitchen, at about 7:00 p.m., Shubham son of Salinder Singh and Chhotu son of unknown came and caught her wrist while she was cooking food. Thereafter, they committed rape upon her one after the another. She suffered injuries on her right hand and on left side of her head and became unconscious. Thereafter, her mother came and helped her. When her father Sushil Kumar came, the matter was reported to the police and FIR was lodged. On the commencement of the investigation, the petitioners were arrested on 6.6.2021. They approached the Court of learned Additional Sessions Judge, Moga for grant of bail. The same was declined vide order dated 28.2.2022. Aggrieved by the same, the petitioners approached this Court for grant of bail.

Learned counsel for the petitioners has submitted that the petitioners are young boys and they had falsely implicated in this case. It has been submitted from reading of the FIR that the age of the prosecutrix is said to be 18 years and thus, there is every chance that the prosecutrix is major and the prosecution of the petitioners under POCSO Act is also not free from doubt. He further submits that in fact the allegations levelled in the FIR, the story cooked by the prosecution itself is not believable as in the presence of the family members, the occurrence as alleged, could not have happened without the consent of the prosecutrix. He has submitted that the petitioners have no criminal antecedents as they have never been involved in any of the criminal cases. He submits that even otherwise, the investigation is complete, charges are framed and now the case is fixed for recording evidence of the prosecution witnesses. To strengthen his arguments, he submits that the learned trial Court

has examined the material witnesses i.e. the victim as PW-1, her mother as PW-2 and her father as PW-3. Their testimonies have been placed on record. He submits that all these material witnesses have not supported the case of the prosecution and on request of the Public Prosecutor, they have been declared hostile. He submits that the prosecution is left with no case against the petitioners and hence, their further custody is totally un-warranted. He has submitted that the petitioners deserve to be granted bail.

Learned State counsel has opposed the submissions of the counsel for the petitioners and submits that there are specific allegations against the petitioners. She has submitted that the prosecutrix is minor and hence, both the petitioners are rightly been prosecuted under the POCSO Act. However, she candidly acknowledges that the material witnesses have not supported the case of the prosecution. She submits that the medical of the prosecutrix was also conducted, however, the reports are still awaited.

Heard.

As per the case of the prosecution, the petitioners have been alleged to have committed rape upon the prosecutrix when she was in kitchen at about 7:00 p.m. The prosecution examined the victim and her parents as the star witnesses of this case as submitted before this Court. All the material witnesses have not supported the case of the prosecution and thus, they were declared hostile. The petitioners are behind bars since 6.6.2021. The material witnesses already stand examined and thus, granting bail to the petitioners, at this stage, cannot be prejudicial to the prosecution on the apprehension that they are in a position to tamper with the evidence. Though the veracity of these allegations would be assessed only after the conclusion of the trial.

However, this Court would refrain itself from commenting on the merits of the case. In the overall facts and circumstances of the case, this Court finds that learned counsel for the petitioners succeeds in making out the case for grant of regular bail to the petitioners. Accordingly, the present petitions are allowed and the petitioners are ordered to be released on bail to the satisfaction of the concerned trial Court/Duty Magistrate.

A photocopy of this order be placed on the file of the connected case.

(RAJESH BHARDWAJ)
JUDGE

28.4.2022

Ashwani

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